
THIRD READING

Bill No: AB 1637
Author: Cooper (D)
Amended: 6/30/22 in Senate
Vote: 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 6/28/22
AYES: Bradford, Ochoa Bogh, Skinner, Wiener
NO VOTE RECORDED: Kamlager

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 61-0, 5/5/22 (Consent) - See last page for vote

SUBJECT: Criminal profiteering: asset forfeiture: unemployment and disability insurance fraud

SOURCE: Author

DIGEST: This bill specifies that fraud offenses relating to COVID-19 pandemic-related insurance programs administered by the California Employment Development Department (EDD) are criminal profiteering activity for which a prosecutor can seek asset forfeiture pursuant to the California Control Profits of Organized Crime Act.

ANALYSIS:

Existing law:

- 1) Establishes the California Control of Profits of Organized Crime Act. (Penal Code §186)
- 2) Finds and declares 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 such criminal activities, and states the intent of the Legislature that the California Control of Profits of Organized Crime Act be

- used by prosecutors to punish and deter only such activities. (Penal Code §186.1)
- 3) Defines “criminal profiteering activity” as an act committed or attempted, or a threat, made for financial gain or advantage, which may be charged as a specified crime, including, among other offenses, “offenses relating to insurance fraud.” (Penal Code §186.2(a))
 - 4) Defines “pattern of criminal profiteering activity” as engaging in at least two incidents of criminal profiteering, that:
 - a) Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics;
 - b) Are not isolated events; and,
 - c) Were committed as a criminal activity of organized crime. (Penal Code §186.2(b)(1)(A))
 - 5) Defines “organized crime” as:
 - a) A crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods or services, as specified;
 - b) A crime that, through planning and coordination of individual efforts, seeks to conduct specified illegal activities including among others, insurance fraud, embezzlement, and forgery;
 - c) A crime committed by a criminal street gang;
 - d) False or fraudulent activities, schemes, or artifices relating to health care programs, as specified; or,
 - e) Theft of personal identifying information. (Penal Code §186.2(d))
 - 6) Provides that in any case in which a person is alleged to have been engaged in a pattern of criminal profiteering activity, upon a conviction of the underlying offense the following assets shall be subject to forfeiture:
 - a) Any property interest whether tangible or intangible, acquired through a pattern of criminal profiteering activity; and,
 - b) All proceeds of a pattern of criminal profiteering activity, including all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity. (Penal Code §186.3)
 - 7) Provides that acts that would constitute a “pattern of criminal profiteering activity” may not be used by a prosecuting agency to seek the forfeiture of

property and proceeds unless the prior act occurred within 10 years, excluding any period of imprisonment, of the commission of the underlying offense. (Penal Code §186.2(b)(2))

- 8) States that a prior act may not be used by a prosecuting agency to seek the forfeiture of property and proceeds if the act resulted in an acquittal. (Penal Code §186.2 (b)(2))
- 9) Establishes the procedures for forfeiture proceedings and requires a forfeiture hearing to be set in the superior court in which the underlying criminal offense will be tried. (Penal Code §§186.4, 186.5)
- 10) Provides that a violation of the Unemployment Insurance Code (UIC), except as specified, is punishable by imprisonment in the county jail not to exceed one year, or in the state prison, or by a fine of not more than \$20,000, or by both. (UIC §2122)
- 11) Provides that any fine imposed by the court for violations of the UIC shall be paid to the office of the prosecutor bringing the complaint, but if the case was referred to the prosecutor by the EDD, or some other governmental unit, one-half of the criminal fine shall be paid to that governmental unit. (UIC §2122.5)

This bill:

- 1) Includes in the enumerated offenses that can be charged under “criminal profiteering activity” offenses relating to insurance fraud involving COVID-19 pandemic-related insurance programs administered by the EDD.
- 2) Provides that if the proceeds for property is forfeited because of a pattern of criminal activity related to offenses relating to insurance fraud, then the proceeds shall be returned to the EDD.

Background

The California Control of Profits of Organized Crime Act sets forth the asset forfeiture procedure for property and proceeds acquired through a pattern of criminal profiteering activity. (Penal Code §186, *et seq.*) Under the Act, the prosecuting agency can seek forfeiture of any property interest whether tangible (such as buildings, real property, and vehicles) or intangible (such as life insurance policies and shares of a company) acquired directly or indirectly through a pattern of criminal profiteering activity and all of the proceeds of a pattern of criminal

profiteering activity, including all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity. (Penal Code §186.3(b) & (c).) For example, items purchased using money obtained by insurance fraud would be eligible for forfeiture. The forfeited assets are distributed to the State's General Fund, and/or the local governmental entity, whichever prosecutes, with no direction for use. (Penal Code §§186.8(c); 186.7(a))

In any case in which a person is alleged to have been engaged in a pattern of criminal profiteering activity, assets are subject to forfeiture upon a conviction of at least two violations of one of more than thirty offenses. (Penal Code §186.2)

Criminal profiteering asset forfeiture requires a court hearing to be held in conjunction with the trial of the underlying criminal offense. (Penal Code §§186.4 (a); 186.5 (c)(1).) The court shall decide whether same jury who heard the criminal charges or a new jury, shall determine whether the defendant's assets were the ill-gotten gains of criminal profiteering. The prosecutor bears the burden to demonstrate, beyond a reasonable doubt that (1) the defendant was engaged in a pattern of criminal profiteering activity and (2) that the property to be forfeited was acquired through a pattern of criminal profiteering activity. (Penal Code §186.5(c))

A "pattern of criminal profiteering activity" means that the defendant engaged in at least two incidents of criminal profiteering that have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics; are not isolated events; and were committed as a criminal activity of organized crime. "Organized crime" includes insurance fraud, grand theft, forgery and money laundering. (Penal Code §186.2 (d))

The Act includes several unemployment insurance fraud acts that come within the definition of "criminal profiteering", including embezzlement (Penal Code §503), forgery (Penal Code §470), and presentation of a false claim (Penal Code §550). (Penal Code §186.2 (a))

The Act also lists specified insurance fraud offenses such as failing to make unemployment insurance contributions, failing to withhold worker deductions, and supplying false or fraudulent information, that come within the definition of "criminal profiteering" under the California Control of Profits of Organized Crime Act. (UIC §§2106, 2108, 2109, 2110, 2110.3, 2110.5, 2110.7 & 2117) (Penal Code §186.2 (a))

This bill clarifies that the insurance fraud offenses listed for the purposes of criminal profiteering include offenses relating to insurance fraud involving COVID-19 pandemic-related insurance programs administered by the EDD.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 7/28/22)

California District Attorneys Association
California State Sheriffs' Association
Los Angeles County District Attorney's Office
Peace Officers Research Association of California

OPPOSITION: (Verified 7/28/22)

None received

ASSEMBLY FLOOR: 61-0, 5/5/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Calderon, Carrillo, Choi, Cooley, Cooper, Megan Dahle, Daly, Davies, Mike Fong, Gabriel, Eduardo Garcia, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Low, Maienschein, Mathis, Mayes, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Voepel, Ward, Akilah Weber, Wilson, Wood, Rendon

NO VOTE RECORDED: Bigelow, Bryan, Cervantes, Chen, Cunningham, Flora, Fong, Friedman, Gallagher, Cristina Garcia, Gipson, Levine, McCarty, Medina, Villapudua, Waldron, Wicks

Prepared by: Mary Kennedy / PUB. S. /
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