

AMENDED IN SENATE APRIL 15, 2013

**SENATE BILL**

**No. 762**

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**Introduced by Senator Hill**

February 22, 2013

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An act to amend ~~Sections 21646 and 21647 of, and to add Section 21645.1 to, Section 21647 of~~ the Business and Professions Code, to amend Section 21206.8 of the Financial Code, and to amend Sections ~~1411~~ 186.2, 186.8, 1411, and 11108.5 of the Penal Code, relating to secondhand goods, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 762, as amended, Hill. Secondhand goods: *lost, stolen, or embezzled items.*

(1) Existing law provides for the regulation of secondhand dealers, as defined, and makes it unlawful for a person to engage in the business of a secondhand dealer without a license issued by the chief of police, the sheriff, or, where appropriate, the police commission. Existing law makes it a crime, punishable by specified fines or imprisonment, or both, if a person knowingly violates the provisions regulating secondhand dealers. Existing law authorizes the district attorney or the Attorney General to bring an action to enjoin a violation or threatened violation of the provisions regulating secondhand dealers.

*This bill would make operating a secondhand business without being licensed a "criminal profiteering activity" and would include the unlicensed operation of a secondhand dealer without reporting acquisitions as required by existing law within the definition of "organized crime."*

(2) *Existing law, the California Control of Profits of Organized Crime Act, defines criminal profiteering as any act committed or attempted,*

*or any threat made for financial gain or advantage, that may be charged as a crime under specified provisions. Under existing law, property and assets acquired or received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity are subject to forfeiture. The money proceeds from that forfeiture are distributed as prescribed.*

*This bill would prescribe that funds derived from a forfeiture of lost, stolen, or embezzled items seized from a pawnbroker or secondhand dealer be distributed 45% to initiating law enforcement agency, 45% to prosecuting attorney's office, and 10% to the Restitution Fund, a continuously appropriated fund, thereby making an appropriation.*

~~This bill would require a person conducting business as a secondhand dealer to provide a valid secondhand dealer license to any peace officer upon demand. Under specified circumstances, the bill would also authorize a peace officer to impound all secondhand tangible personal property, as defined, or currency up to \$25,000 found in the possession or control of the person if a secondhand dealer license is not provided to the peace officer and the peace officer has probable cause to believe the property or currency was acquired while the person was operating as a secondhand dealer without being licensed, except as specified. The bill would require the imposition of storage charges for secondhand tangible personal property impounded pursuant to these provisions, would authorize the property or currency to be stored up to 90 days, and would set forth requirements for the redemption, or the forfeiture or sale, of the impounded property or currency. The bill would require an impounding agency to satisfy specified requirements regarding impounded property or currency that has not been redeemed and would require the district attorney or city attorney to follow specified procedures relative to forfeiture and claims to the property or currency. The bill would establish a \$100 fee for asserting a claim to the impounded property or currency that is subject to forfeiture, would require the fee to be reimbursed to a prevailing claimant, and would, if a claimant does not prevail, require the fee to be distributed between the district attorney or city attorney filing the action and the Trial Court Trust Fund. The proceeds of any sale or forfeiture under the bill would also be disbursed in a specified manner, including, of any remaining proceeds, 10% to the Restitution Fund, a continuously appropriated fund, thereby making an appropriation.~~

~~The bill would also authorize a nonprofit association composed of 50 or more licensed secondhand dealers to bring an action to enjoin a~~

~~person from conducting business as a secondhand dealer without being licensed and would authorize an association that prevails in such an action to be awarded reasonable attorney's fees and costs of suit, as specified.~~

~~(2)~~

(3) Existing law authorizes a peace officer to place a hold on property in possession of a pawnbroker, secondhand dealer, or coin dealer if the peace officer has probable cause to believe that property is stolen, as specified, and regulates the manner in which the property is placed on hold, persons claiming the property are notified, and disputes arising out of claims for the property are adjudicated, as provided.

This bill would revise these provisions to, among other things, ~~require~~ *authorize* a peace officer to *also* place a hold on ~~stolen property, property that the officer has probable cause to believe is lost or embezzled or to seize the property,~~ as specified, limit the provisions to licensed pawnbrokers and secondhand dealers, revise notification procedures regarding ~~lost or~~ *lost, stolen, or embezzled* property, and require a person claiming ownership of ~~allegedly stolen or embezzled~~ *the* property to file a written statement, signed under penalty of perjury, stating the factual basis upon which they claim ownership or an interest in the property. *This bill would require law enforcement to return seized property at the conclusion of the criminal proceedings. This bill would also authorize the issuance of a search warrant in specified circumstances, including where the property is being concealed by a pawnbroker who is the subject of a criminal investigation or if a pawnbroker or secondhand dealer refuses to honor the hold upon request of a peace officer.*

~~(3)~~

(4) Because a knowing violation of the bill's provisions by a person engaging in the business of a secondhand dealer would be a crime, and because the bill would expand the crime of perjury, 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.

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: yes.

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

1     ~~SECTION 1. Section 21645.1 is added to the Business and~~  
2     ~~Professions Code, to read:~~

3     ~~21645.1. (a) The Legislature hereby finds and declares that~~  
4     ~~an effective means of punishing and deterring the unlicensed~~  
5     ~~practice of dealing in secondhand tangible personal property,~~  
6     ~~including, but not limited to, gold jewelry, platinum jewelry, and~~  
7     ~~sterling silver, and to further effectuate the legislative intent of~~  
8     ~~Section 21625, is through the forfeiture of property acquired and~~  
9     ~~accumulated by a person who is required to be licensed pursuant~~  
10    ~~to this article but is found to be in violation of Section 21640. The~~  
11    ~~provisions of this section are intended to be in addition to the~~  
12    ~~penalty provisions of Section 21645.~~

13    ~~(b) A person conducting business as a secondhand dealer, as~~  
14    ~~defined in Section 21626, shall provide a valid license issued under~~  
15    ~~this article to any peace officer upon demand.~~

16    ~~(c) (1) If a person, after being convicted of operating an~~  
17    ~~unlicensed secondhand business at any time within the preceding~~  
18    ~~five years or after being issued a written warning within the~~  
19    ~~preceding 12 months that the business must be licensed under this~~  
20    ~~article, is found buying secondhand tangible personal property~~  
21    ~~from the public and is unable to provide a valid secondhand dealer~~  
22    ~~license issued under this article on the demand of a peace officer~~  
23    ~~as required by subdivision (b), the peace officer may impound all~~  
24    ~~secondhand tangible personal property and any currency in an~~  
25    ~~amount not to exceed twenty-five thousand dollars (\$25,000) found~~  
26    ~~in the possession or under the control of the person if, upon~~  
27    ~~examination, the peace officer has probable cause to believe the~~  
28    ~~secondhand tangible personal property or currency was acquired~~  
29    ~~while the person was operating as a secondhand dealer without~~  
30    ~~being licensed, unless the peace officer is reasonably able, by other~~  
31    ~~means, to verify that the person was properly licensed at the time~~  
32    ~~the person acquired the secondhand tangible personal property or~~  
33    ~~currency.~~

34    ~~(2) A peace officer shall not impound the secondhand tangible~~  
35    ~~personal property or any currency pursuant to this subdivision if~~  
36    ~~there is credible evidence establishing all of the following:~~

37    ~~(A) The person conducting business as a secondhand dealer~~  
38    ~~provides documentation indicating that he or she held a valid~~

1 secondhand dealer license for that location at any time within the  
2 preceding 90 days, unless the license was terminated by the issuing  
3 agency and the person was provided notice of termination.

4 (B) The person required to be licensed pursuant to this article  
5 recorded and reported the acquisition of secondhand tangible  
6 personal property pursuant to Section 21628.

7 (3) A peace officer may exercise discretion with respect to  
8 impoundment under this subdivision if the person can establish  
9 that he or she is an employee of a person required to be licensed  
10 under this article, the employer is not present, and the person  
11 conducting business as a secondhand dealer does not have  
12 management or control of, or a financial interest in, the business  
13 for which a secondhand dealer license is required under this article.

14 (4) A peace officer shall serve the person from whom  
15 secondhand tangible personal property or currency is taken  
16 pursuant to this subdivision with a notice specifying the  
17 requirements set forth in subdivision (d), the right of the  
18 impounding agency to sell the secondhand tangible personal  
19 property and forfeit the currency if the requirements of subdivision  
20 (d) are not met within the statutory time, and the right of the person  
21 from whom the secondhand tangible personal property or currency  
22 is taken to challenge any sale or forfeiture following service of the  
23 notice of forfeiture required under subdivision (g). Within five  
24 days after the impoundment, the peace officer shall also serve on  
25 the person from whom the secondhand tangible personal property  
26 or currency is taken, and any secured creditor, a notice advising  
27 those parties that they are entitled to a postimpoundment hearing  
28 before the impounding agency within 30 days after the service of  
29 the postimpoundment hearing notice. A person from whom  
30 secondhand tangible personal property or currency is taken may  
31 challenge the results of the postimpoundment hearing in the  
32 appropriate court.

33 (d) Any secondhand tangible personal property or currency  
34 impounded pursuant to subdivision (c) shall be stored for a period  
35 not exceeding 90 days by the impounding officer, and shall be  
36 available to be redeemed when both of the following conditions  
37 have been satisfied:

38 (1) The person from whom the secondhand tangible personal  
39 property or currency was taken has obtained or otherwise produced

1 a valid secondhand dealer license for the business as required under  
2 this article.

3 ~~(2) The reports of acquisition of secondhand tangible personal~~  
4 ~~property as required by Section 21628 have been completed for~~  
5 ~~all of the secondhand tangible personal property that was~~  
6 ~~impounded.~~

7 ~~(e) Storage charges shall be imposed for the secondhand tangible~~  
8 ~~personal property impounded under this section in accordance with~~  
9 ~~Section 21200.6 of the Financial Code.~~

10 ~~(f) If after 60 days from the date of the impoundment the person~~  
11 ~~from whom the secondhand tangible personal property or currency~~  
12 ~~was taken has failed to satisfy the requirements of subdivision (d),~~  
13 ~~the impounding agency shall do all of the following:~~

14 ~~(1) If the name of the seller, seller's identification, and~~  
15 ~~description of the secondhand tangible personal property is known,~~  
16 ~~the agency shall prepare the report of acquisition of secondhand~~  
17 ~~tangible personal property for all impounded property as required~~  
18 ~~by Section 21628 or verify that the report was duly transmitted to~~  
19 ~~the Department of Justice.~~

20 ~~(2) Notify the district attorney or city attorney of the~~  
21 ~~impoundment and request a notice of forfeiture.~~

22 ~~(g) The district attorney or city attorney shall serve on the person~~  
23 ~~from whom the secondhand tangible personal property or currency~~  
24 ~~was taken and on any secured creditor a notice of forfeiture for all~~  
25 ~~or part of the secondhand tangible personal property or currency.~~  
26 ~~The notice shall be issued by registered mail on or after the 65th~~  
27 ~~day following the impoundment. The notice shall state that the~~  
28 ~~person served with the notice of forfeiture has 15 calendar days~~  
29 ~~from the date of the mailing of the notice to file a claim. A secured~~  
30 ~~creditor located outside the State of California shall be allowed an~~  
31 ~~additional five days to file a claim. The notice shall identify the~~  
32 ~~name and address of the district attorney or city attorney who is~~  
33 ~~authorized to prosecute the forfeiture action and to receive~~  
34 ~~objections. If no claim has been received after service of the notice~~  
35 ~~of forfeiture, the impounding agency may sell the secondhand~~  
36 ~~tangible personal property to the highest bidder at a noticed, public~~  
37 ~~sale.~~

38 ~~(h) If the district attorney or city attorney issuing the notice of~~  
39 ~~forfeiture does not receive a claim within the time limit provided~~  
40 ~~in subdivision (g), the district attorney or city attorney shall sign~~

1 and record with the county recorder a notice of forfeiture. A written  
2 declaration of forfeiture by the district attorney or city attorney  
3 shall be deemed to provide good and sufficient title to the forfeited  
4 property or currency. Any property or currency impounded but  
5 not forfeited shall be returned to the person from whom it was  
6 taken within 90 days of the impoundment.

7 (i) (1) ~~If the district attorney or city attorney receives a timely~~  
8 ~~claim, the district attorney or city attorney shall file a petition for~~  
9 ~~forfeiture within 10 days of receiving the claim with the appropriate~~  
10 ~~court hearing any criminal action brought under Section 21640 or~~  
11 ~~21645. The district attorney or city attorney shall establish an~~  
12 ~~expedited hearing date in accordance with instructions from the~~  
13 ~~court and the court shall hear the matter without delay. A fee of~~  
14 ~~one hundred dollars (\$100) shall be paid by any claimant but shall~~  
15 ~~be reimbursed by the impounding agency if the claimant prevails.~~  
16 ~~To the extent practicable, the civil and criminal cases, if a criminal~~  
17 ~~complaint is filed against the person who is accused of operating~~  
18 ~~as an unlicensed secondhand dealer, shall be heard at the same~~  
19 ~~time in an expedited, consolidated proceeding. A proceeding in~~  
20 ~~the civil case is a limited civil case.~~

21 (2) ~~The fee shall be distributed equally between the district~~  
22 ~~attorney or city attorney filing the action and the Trial Court Trust~~  
23 ~~Fund.~~

24 (3) ~~The burden of proof in the civil case shall be on the person~~  
25 ~~from whom the secondhand tangible personal property or currency~~  
26 ~~was taken to prove by a preponderance of the evidence that the~~  
27 ~~secondhand tangible personal property or currency has been~~  
28 ~~acquired when the person from whom it was seized was properly~~  
29 ~~licensed under this article and that the acquisition of the~~  
30 ~~secondhand tangible personal property or currency was duly~~  
31 ~~reported pursuant to Section 21628. All questions that may arise~~  
32 ~~shall be decided and all other proceedings shall be conducted as~~  
33 ~~in an ordinary civil action.~~

34 (4) ~~A judgment of forfeiture does not require as a condition~~  
35 ~~precedent the conviction of a defendant of an offense under this~~  
36 ~~article.~~

37 (5) ~~The filing of a claim within the time limit specified in~~  
38 ~~subdivision (g) is a jurisdictional prerequisite for the availing of~~  
39 ~~the action authorized by that subdivision.~~

1 (j) ~~All right, title, and interest in the secondhand tangible~~  
2 ~~personal property or currency shall vest in the impounding agency~~  
3 ~~upon commission of the act giving rise to the forfeiture. However,~~  
4 ~~the secondhand tangible personal property or currency shall not~~  
5 ~~be subject to forfeiture or sale until all court challenges are~~  
6 ~~resolved.~~

7 (k) ~~Any secondhand tangible personal property that is not~~  
8 ~~redeemed pursuant to subdivision (d) and is subsequently forfeited~~  
9 ~~pursuant to a notice of forfeiture or a judgment of forfeiture shall~~  
10 ~~be sold to the highest bidder at a noticed, public sale. The notice~~  
11 ~~shall be published in a local paper of general jurisdiction nearest~~  
12 ~~the impounding agency within 10 days after that agency receives~~  
13 ~~the notice or judgment of forfeiture.~~

14 (l) ~~The proceeds of any sale provided for pursuant to subdivision~~  
15 ~~(k) or the forfeiture of currency shall be distributed in the following~~  
16 ~~order:~~

17 (1) ~~First to the impounding agency to satisfy the storage charge~~  
18 ~~provided in subdivision (e), if any.~~

19 (2) ~~Second, to any secured creditor to satisfy the indebtedness~~  
20 ~~of the person from whom the secondhand tangible personal~~  
21 ~~property or currency was taken.~~

22 (3) ~~Third, funds shall be made available to pay any local agency~~  
23 ~~and court costs that are reasonably related to the implementation~~  
24 ~~of this section and that remain unsatisfied.~~

25 (4) ~~Of the remaining proceeds, 10 percent shall be deposited~~  
26 ~~into the Restitution Fund, 45 percent into the general fund of the~~  
27 ~~city or county or city and county that instituted the forfeiture, and~~  
28 ~~45 percent into the county or city and county in which the forfeiture~~  
29 ~~occurred.~~

30 (m) ~~For purposes of this section, “secondhand tangible personal~~  
31 ~~property” shall mean and refer to gold, silver, platinum, palladium,~~  
32 ~~and jewelry made of gold, silver, platinum, palladium, or having~~  
33 ~~any diamond, ruby, emerald, or other precious stone, or any item~~  
34 ~~containing sterling or fine silver.~~

35 ~~SEC. 2. Section 21646 of the Business and Professions Code~~  
36 ~~is amended to read:~~

37 ~~21646. The district attorney or the Attorney General, in the~~  
38 ~~name of the people of the State of California, may bring an action~~  
39 ~~to enjoin the violation or the threatened violation of any provision~~  
40 ~~of this article or of any regulation made pertaining to the provisions~~



1 of this article. A nonprofit association composed of 50 or more  
 2 licensed pawnbrokers or secondhand dealers may bring an action  
 3 to enjoin a person from conducting business as a secondhand dealer  
 4 without being licensed as provided in this article. Any proceeding  
 5 brought hereunder shall be governed in all respects by the  
 6 provisions of Chapter 3 (commencing with Section 525) of Title  
 7 7 of Part 2 of the Code of Civil Procedure. In the case of a nonprofit  
 8 association bringing an action to enjoin a person from conducting  
 9 business as a secondhand dealer without being licensed, if the  
 10 association prevails and confers a public benefit by receiving an  
 11 injunction, it shall be awarded its reasonable attorney's fees and  
 12 costs of suit.

13 ~~SEC. 3.~~

14 *SECTION 1.* Section 21647 of the Business and Professions  
 15 Code is amended to read:

16 21647. (a) ~~Whenever any~~ *If a* peace officer has probable cause  
 17 to believe that property, except coins, monetized bullion, or  
 18 "commercial grade ingots" as defined in subdivision (d) of Section  
 19 21627, in the possession of a licensed pawnbroker or secondhand  
 20 dealer is *lost, stolen, or embezzled,* the peace officer ~~shall~~ *may*  
 21 place a hold on the property for a period not to exceed 90 days.  
 22 When a peace officer places a hold on the property, the peace  
 23 officer shall give the licensed pawnbroker or secondhand dealer  
 24 a written notice at the time the hold is placed, describing the item  
 25 or items to be held. During that period the *peace officer may take*  
 26 *custody of the property as evidence or leave it with the licensed*  
 27 *pawnbroker or secondhand dealer. If the peace officer placing the*  
 28 *hold leaves the item with the* licensed pawnbroker or secondhand  
 29 dealer, *that pawnbroker or secondhand dealer* shall not release  
 30 or dispose of the property, except pursuant to a court order or upon  
 31 receipt of a written authorization signed by any peace officer who  
 32 is a member of the law enforcement agency of which the peace  
 33 officer placing the hold on the property is a member. A licensed  
 34 pawnbroker or secondhand dealer ~~shall~~ *is not be* subject to civil  
 35 liability for compliance with this section.

36 (b) (1) Whenever property that is in the possession of a licensed  
 37 pawnbroker or secondhand dealer, and that has been placed on  
 38 hold pursuant to this section, is required by a peace officer in a  
 39 criminal investigation, the licensed pawnbroker or secondhand  
 40 dealer, upon reasonable notice, shall produce the property at

1 reasonable times and places or may deliver the property to the  
2 peace officer upon the request of any peace officer.

3 (2) If property placed on hold pursuant to this section is  
4 physically surrendered or delivered to a law enforcement *agency*  
5 during the period of the hold, the hold and the pawnbroker's lien  
6 against the property shall continue. Upon termination of criminal  
7 proceedings for which the property was placed on hold, the  
8 property shall be returned to the *licensed* pawnbroker from whom  
9 it was taken for disposition provided under subdivision (d).

10 (c) Whenever a law enforcement agency has knowledge that  
11 property in the possession of a licensed pawnbroker or secondhand  
12 dealer has been reported as ~~lost or stolen~~, *lost, stolen, or embezzled*,  
13 the law enforcement agency shall, within two business days after  
14 placing the hold on the property pursuant to this section, notify in  
15 writing the person who reported the property as ~~lost or~~ *lost, stolen,*  
16 *or embezzled* of the following:

17 (1) The name, address, and telephone number of the licensed  
18 pawnbroker or secondhand dealer who reported the acquisition of  
19 the property.

20 (2) That the law neither requires nor prohibits payment of a fee  
21 or any other condition in return for the surrender of the property,  
22 except that when the person who reported the property ~~lost or~~  
23 ~~stolen~~ *lost, stolen, or embezzled* does not choose to participate in  
24 the prosecution of an identified alleged thief, the person shall pay  
25 the licensed pawnbroker or secondhand dealer the "out-of-pocket"  
26 expenses paid in the acquisition of the property in return for the  
27 surrender of the property.

28 (3) That if the person who reported the property as ~~lost or stolen~~  
29 *lost, stolen, or embezzled* takes no action to recover the property  
30 from the licensed pawnbroker or secondhand dealer within 60 days  
31 of the mailing of the notice, the licensed pawnbroker or secondhand  
32 dealer may treat the property as other property received in the  
33 ordinary course of business. During the 60-day notice period, the  
34 licensed pawnbroker or secondhand dealer may not release the  
35 property to any other person.

36 (4) That a copy of the notice, with the address of the person  
37 who reported the property as ~~lost or stolen~~ *lost, stolen, or embezzled*  
38 deleted, will be mailed to the licensed pawnbroker or secondhand  
39 dealer who is in possession of the property.

1 (d) When property that is in the possession of a licensed  
2 pawnbroker or secondhand dealer is subject to a hold as provided  
3 in subdivision (a), and the property is no longer required for the  
4 purpose of a criminal investigation, the law enforcement agency  
5 that placed the hold on the property shall release the hold on the  
6 property. ~~When the law enforcement agency has knowledge that~~  
7 ~~the property has been reported lost or stolen, the law enforcement~~  
8 ~~agency shall then make notification to the person who reported~~  
9 ~~the property as lost or stolen pursuant to subdivision (e) and return~~  
10 ~~the property to the licensed pawnbroker or secondhand dealer~~  
11 ~~from which it was taken if the agency took physical possession of~~  
12 ~~the property.~~

13 (e) If a pledgor seeks to redeem property that is subject to a  
14 hold, the *licensed* pawnbroker shall advise the pledgor of the name  
15 of the peace officer who placed the hold on the property and the  
16 name of the law enforcement agency of which the officer is a  
17 member. If the property is not required to be held pursuant to a  
18 criminal prosecution the hold shall be released.

19 (f) Whenever information regarding allegedly ~~lost or stolen~~ *lost,*  
20 *stolen, or embezzled* property is entered into the Department of  
21 Justice automated property system or automated firearms system,  
22 and the property is thereafter identified and found to be in the  
23 possession of a licensed pawnbroker or secondhand dealer, the  
24 property shall be placed on a hold pursuant to this section and  
25 Section 11108.5 of the Penal Code.

26 (g) If the hold, including any additional hold, is allowed to lapse,  
27 or 60 days elapse following the delivery of the notice required to  
28 be given by subdivision (c) ~~of this section~~ to the person who  
29 reported the property to be ~~lost or stolen~~ *lost, stolen, or embezzled*  
30 without a claim being made by that person, whichever is later, the  
31 licensed pawnbroker or secondhand dealer may mail under a  
32 ~~Certificate~~ *certificate* of ~~Mailing~~ *mailing* issued by the United  
33 States Post Office, addressed to the law enforcement agency that  
34 placed the property on hold, a written request to delete the property  
35 listing from the Department of Justice automated property system  
36 or automated firearms system, as is applicable. Within 30 days  
37 after the request has been mailed, the law enforcement agency  
38 shall either cause the property listing to be deleted as requested or  
39 place a hold on the property. If no law enforcement agency takes  
40 any further action with respect to the property within 45 days after

1 the mailing of the request, the licensed pawnbroker or secondhand  
2 dealer may presume that the property listing has been deleted as  
3 requested and may thereafter deal with the property accordingly,  
4 and shall not be subject to liability arising from the failure of the  
5 removal of the property listing from the Department of Justice  
6 automated property system or automated firearms system.

7 (h) A licensed pawnbroker or secondhand dealer shall not refuse  
8 a request to place property in their possession on hold pursuant to  
9 this section when a peace officer has probable cause to believe the  
10 property is ~~stolen~~ *lost, stolen, or embezzled*. If a licensed  
11 pawnbroker or secondhand dealer refuses a request to place  
12 property on hold pursuant to this section, after being provided  
13 written notice of the provisions of this section, the property may  
14 be seized with or without a warrant. The peace officer shall issue  
15 a ~~receipt~~ *receipt*, as described in Section 21206.7 of the Financial  
16 Code, left with the licensed pawnbroker or secondhand dealer.  
17 The property shall be disposed of pursuant to procedures set forth  
18 in Section 21206.8 of the Financial Code, which shall apply to  
19 both licensed pawnbrokers and secondhand dealers under this  
20 section.

21 (i) A search warrant shall not be issued for the search of the  
22 business of a licensed pawnbroker or secondhand dealer, unless  
23 the application by the peace officer discloses *and the court so*  
24 *concludes that either (1) the evidence sought to be secured by the*  
25 *search warrant is sought for its evidentiary value other than being*  
26 *property that is lost, stolen, or embezzled; (2) the peace officer's*  
27 *prior efforts taken to utilize the hold procedures set forth in this*  
28 *section* ~~and~~ *establishes to the* ~~issuing magistrate's court's~~  
29 *satisfaction that the licensed pawnbroker or secondhand dealer has*  
30 *refused to voluntarily surrender the* ~~stolen~~ *lost, stolen, or embezzled*  
31 *property; property; or that (3) there is probable cause to believe*  
32 *that the* ~~stolen~~ *lost, stolen, or embezzled property is willfully being*  
33 *concealed by the licensed pawnbroker or secondhand dealer and*  
34 *that any notice required by this section would frustrate the criminal*  
35 *investigation of the licensed pawnbroker or secondhand dealer.*

36 (j) If a civil or criminal court is called upon to adjudicate the  
37 competing claims of a licensed pawnbroker or secondhand dealer  
38 and another party claiming ownership or an interest in the property  
39 that is or was subject to a hold pursuant to this section, the court

1 shall award possession of the property only after due consideration  
2 is given to the effect of Section 2403 of the Commercial Code.

3 ~~SEC. 4.~~

4 *SEC. 2.* Section 21206.8 of the Financial Code is amended to  
5 read:

6 21206.8. (a) Notwithstanding the provisions of Chapter 12  
7 (commencing with Section 1407) of Title 10 of Part 2 of the Penal  
8 Code, whenever property alleged to have been lost, stolen, or  
9 embezzled is taken from a pawnbroker, the peace officer,  
10 magistrate, court, clerk, or other person having custody of the  
11 property shall not deliver the property to any person claiming  
12 ownership unless the provisions of this section are complied with.

13 (b) (1) If any person makes a claim of ownership, the person  
14 shall file a written statement, signed under penalty of perjury,  
15 stating the factual basis upon which they claim ownership or an  
16 interest in the property with the person having custody of the  
17 property, and the person having custody of the property shall notify  
18 the pawnbroker of the claim by providing a true and correct copy  
19 of the claim to the pawnbroker.

20 (2) If the pawnbroker makes no claim with respect to the  
21 property within 10 days of such notification, the property may be  
22 disposed of as otherwise provided by law.

23 (3) In adjudicating the competing claims of a pawnbroker and  
24 a person claiming ownership or an interest in the property seized  
25 from a pawnbroker, ~~the magistrate or the person having custody~~  
26 ~~of the property~~ *adjudicating court* shall give due consideration to  
27 the effect Section 2403 of the Commercial Code may have on the  
28 claims.

29 (4) At least 30 calendar days before any hearing adjudicating  
30 any competing claims of a pawnbroker and a person claiming  
31 ownership or an interest in the property, the person having custody  
32 of the property shall deliver to the pawnbroker a true and correct  
33 copy of the police report substantiating the basis of the seizure of  
34 the property from the pawnbroker.

35 (c) If property alleged to have been stolen or embezzled is taken  
36 from a pawnbroker, prior to any disposal of the property pursuant  
37 to Section 1411 of the Penal Code, the notice to be given to the  
38 owner and owner of a security interest pursuant to Section 1411  
39 shall be given to the pawnbroker. Such property shall not be

1 disposed of pursuant to Section 1411 until three months after such  
2 notice has been given.

3 (d) A pawnbroker shall not be liable to any person for any  
4 property seized from the pawnbroker on account of the  
5 pawnbroker's inability to return the property to that person because  
6 of the seizure.

7 *SEC. 3. 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 act committed  
11 or attempted or any 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:

14 (1) Arson, as defined in Section 451.

15 (2) Bribery, as defined in Sections 67, 67.5, and 68.

16 (3) Child pornography or exploitation, as defined in subdivision  
17 (b) of Section 311.2, or Section 311.3 or 311.4, which may be  
18 prosecuted as a felony.

19 (4) Felonious assault, as defined in Section 245.

20 (5) Embezzlement, as defined in Sections 424 and 503.

21 (6) Extortion, as defined in Section 518.

22 (7) Forgery, as defined in Section 470.

23 (8) Gambling, as defined in Sections 337a to 337f, inclusive,  
24 and Section 337i, except the activities of a person who participates  
25 solely as an individual bettor.

26 (9) Kidnapping, as defined in Section 207.

27 (10) Mayhem, as defined in Section 203.

28 (11) Murder, as defined in Section 187.

29 (12) Pimping and pandering, as defined in Section 266.

30 (13) Receiving stolen property, as defined in Section 496.

31 (14) Robbery, as defined in Section 211.

32 (15) Solicitation of crimes, as defined in Section 653f.

33 (16) Grand theft, as defined in Section 487.

34 (17) Trafficking in controlled substances, as defined in Sections  
35 11351, 11352, and 11353 of the Health and Safety Code.

36 (18) Violation of the laws governing corporate securities, as  
37 defined in Section 25541 of the Corporations Code.

38 (19) Any of the offenses contained in Chapter 7.5 (commencing  
39 with Section 311) of Title 9, relating to obscene matter, or in

1 Chapter 7.6 (commencing with Section 313) of Title 9, relating to  
2 harmful matter that may be prosecuted as a felony.

3 (20) Presentation of a false or fraudulent claim, as defined in  
4 Section 550.

5 (21) False or fraudulent activities, schemes, or artifices, as  
6 described in Section 14107 of the Welfare and Institutions Code.

7 (22) Money laundering, as defined in Section 186.10.

8 (23) Offenses relating to the counterfeit of a registered mark,  
9 as specified in Section 350.

10 (24) Offenses relating to the unauthorized access to computers,  
11 computer systems, and computer data, as specified in Section 502.

12 (25) Conspiracy to commit any of the crimes listed above, as  
13 defined in Section 182.

14 (26) Subdivision (a) of Section 186.22, or a felony subject to  
15 enhancement as specified in subdivision (b) of Section 186.22.

16 (27) Any offenses related to fraud or theft against the state's  
17 beverage container recycling program, including, but not limited  
18 to, those offenses specified in this subdivision and those criminal  
19 offenses specified in the California Beverage Container Recycling  
20 and Litter Reduction Act, commencing at Section 14500 of the  
21 Public Resources Code.

22 (28) Human trafficking, as defined in Section 236.1.

23 (29) Any crime in which the perpetrator induces, encourages,  
24 or persuades a person under 18 years of age to engage in a  
25 commercial sex act. For purposes of this paragraph, a commercial  
26 sex act means any sexual conduct on account of which anything  
27 of value is given or received by any person.

28 (30) Any crime in which the perpetrator, through force, fear,  
29 coercion, deceit, violence, duress, menace, or threat of unlawful  
30 injury to the victim or to another person, causes a person under 18  
31 years of age to engage in a commercial sex act. For purposes of  
32 this paragraph, a commercial sex act means any sexual conduct  
33 on account of which anything of value is given or received by any  
34 person.

35 (31) Theft of personal identifying information, as defined in  
36 Section 530.5.

37 (32) Offenses involving the theft of a motor vehicle, as specified  
38 in Section 10851 of the Vehicle Code.

39 (33) Abduction or procurement by fraudulent inducement for  
40 prostitution, as defined in Section 266a.

1     (34) *Buying, selling, trading, accepting for sale on consignment,*  
2 *accepting for auctioning, or auctioning secondhand tangible*  
3 *personal property as defined by Section 21627 of the Business and*  
4 *Professions Code, including, but not limited to, gold, silver,*  
5 *platinum, palladium, and jewelry made of gold, silver, platinum,*  
6 *palladium, or having any diamond, ruby, emerald, or other*  
7 *precious stone, or any item containing sterling or fine silver*  
8 *without being licensed pursuant to Section 21640 of the Business*  
9 *and Professions Code.*

10    (b) (1) “Pattern of criminal profiteering activity” means  
11 engaging in at least two incidents of criminal profiteering, as  
12 defined by this chapter, that meet the following requirements:

13       (A) Have the same or a similar purpose, result, principals,  
14 victims, or methods of commission, or are otherwise interrelated  
15 by distinguishing characteristics.

16       (B) Are not isolated events.

17       (C) Were committed as a criminal activity of organized crime.

18    (2) Acts that would constitute a “pattern of criminal profiteering  
19 activity” may not be used by a prosecuting agency to seek the  
20 remedies provided by this chapter unless the underlying offense  
21 occurred after the effective date of this chapter and the prior act  
22 occurred within 10 years, excluding any period of imprisonment,  
23 of the commission of the underlying offense. A prior act may not  
24 be used by a prosecuting agency to seek remedies provided by this  
25 chapter if a prosecution for that act resulted in an acquittal.

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

28    (d) “Organized crime” means crime that is of a conspiratorial  
29 nature and that is either of an organized nature and seeks to supply  
30 illegal goods and services such as narcotics, prostitution,  
31 loan-sharking, gambling, and pornography, or that, through  
32 planning and coordination of individual efforts, seeks to conduct  
33 the illegal activities of arson for profit, hijacking, insurance fraud,  
34 smuggling, operating vehicle theft rings, fraud against the beverage  
35 container recycling program, or systematically encumbering the  
36 assets of a business for the purpose of defrauding creditors.  
37 “Organized crime” also means crime committed by a criminal  
38 street gang, as defined in subdivision (f) of Section 186.22.  
39 “Organized crime” also means false or fraudulent activities,  
40 schemes, or artifices, as described in Section 14107 of the Welfare



1 and Institutions Code, and the theft of personal identifying  
2 information, as defined in Section 530.5. “*Organized crime*” also  
3 means the violation of Section 21640 of the Business and  
4 Professions Code while not reporting acquisitions of secondhand  
5 property as required by Section 21628 of the Business and  
6 Professions Code.

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

9 SEC. 4. Section 186.8 of the Penal Code is amended to read:

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

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

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

30 (c) To the General Fund of the state or a general fund of a local  
31 governmental entity, whichever prosecutes.

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

1 (e) In any case involving crimes against the state beverage  
2 container recycling program, in lieu of the distribution of proceeds  
3 provided in subdivision (c), the proceeds shall be deposited in the  
4 penalty account established pursuant to subdivision (d) of Section  
5 14580 of the Public Resources Code, except that a portion of the  
6 proceeds equivalent to the cost of prosecution in the case shall be  
7 distributed to the local prosecuting entity that filed the petition of  
8 forfeiture.

9 (f) (1) In any case described in paragraph (29) or (30) of  
10 subdivision (a) of Section 186.2, or paragraph (33) of subdivision  
11 (a) of Section 186.2 where the victim is a minor, in lieu of the  
12 distribution provided for in subdivision (c), the proceeds shall be  
13 deposited in the Victim-Witness Assistance Fund to be available  
14 for appropriation to fund child sexual exploitation and child sexual  
15 abuse victim counseling centers and prevention programs under  
16 Section 13837. Fifty percent of the funds deposited in the  
17 Victim-Witness Assistance Fund pursuant to this subdivision shall  
18 be granted to community-based organizations that serve minor  
19 victims of human trafficking.

20 (2) Notwithstanding paragraph (1), any proceeds specified in  
21 paragraph (1) that would otherwise be distributed to the General  
22 Fund of the state under subdivision (c) pursuant to a paragraph in  
23 subdivision (a) of Section 186.2 other than paragraph (29) or (30)  
24 of subdivision (a) of Section 186.2, or paragraph (33) of  
25 subdivision (a) of Section 186.2 where the victim is a minor, shall,  
26 except as otherwise required by law, continue to be distributed to  
27 the General Fund of the state as specified in subdivision (c).

28 (g) *In any case described in paragraph (34) of subdivision (a)*  
29 *of Section 186.2, in lieu of the distribution provided for in*  
30 *subdivision (c), the proceeds shall be distributed in the following*  
31 *manner: (1) 45 percent shall be distributed into the general fund*  
32 *of the city, county, or city and county that instituted the forfeiture,*  
33 *(2) 45 percent shall be distributed to the general fund of the city,*  
34 *county, or city and county that prosecuted the forfeiture, and (3)*  
35 *10 percent shall be distributed to the Restitution Fund.*

36 SEC. 5. Section 1411 of the Penal Code is amended to read:

37 1411. (a) If the ownership of the property stolen or embezzled  
38 and the address of the owner, and the address of the owner of a  
39 security interest therein, can be reasonably ascertained, the peace  
40 officer who took custody of the property shall notify the owner,

1 and a person having a security interest therein, by letter of the  
2 location of the property and the method by which the owner may  
3 obtain it. This notice shall be given upon the conviction of a person  
4 for an offense involving the theft, embezzlement, or possession of  
5 the property, or if a conviction was not obtained, upon the making  
6 of a decision by the district attorney not to file the case or upon  
7 the termination of the proceedings in the case. Except as provided  
8 in Section 217 of the Welfare and Institutions Code, if the property  
9 stolen or embezzled is not claimed by the owner before the  
10 expiration of three months after the giving of this notice, or, in any  
11 case in which such a notice is not given, before the expiration of  
12 six months from the conviction of a person for an offense involving  
13 the theft, embezzlement, or possession of the property, or if a  
14 conviction was not obtained, then from the time the property came  
15 into the possession of the peace officer or the case involving the  
16 person from whom it was obtained is disposed of, whichever is  
17 later, the magistrate or other officer having it in custody may, on  
18 the payment of the necessary expenses incurred in its preservation,  
19 deliver it to the county treasurer or other proper county officer, by  
20 whom it shall be sold and the proceeds paid into the county  
21 treasury. However, *notwithstanding any other law*, if the person  
22 from whom custody of the property was taken is a secondhand  
23 dealer or licensed pawnbroker and reasonable but unsuccessful  
24 efforts have been made to notify the owner of the property and the  
25 property is no longer needed for the criminal proceeding, the  
26 property shall be returned to the secondhand dealer or pawnbroker  
27 who had custody of the property and be treated as regularly  
28 acquired property. If the property is transferred to the county  
29 purchasing agent it may be sold in the manner provided by Article  
30 7 (commencing with Section 25500) of Chapter 5 of Part 2 of  
31 Division 2 of Title 3 of the Government Code for the sale of surplus  
32 personal property. If the county officer determines that any of the  
33 property transferred to him or her for sale is needed for a public  
34 use, the property may be retained by the county and need not be  
35 sold. The magistrate or other officer having the property in custody  
36 may, however, provide for the sale of the property in the manner  
37 provided for the sale of unclaimed property which has been held  
38 for at least three months pursuant to Section 2080.4 of the Civil  
39 Code.

1 (b) This section shall not govern the disposition of property  
2 placed on hold pursuant to Section 21647 of the Business and  
3 Professions Code, notwithstanding the current custodial status of  
4 the property, unless the licensed pawnbroker or secondhand dealer,  
5 after receipt of the written advisement required by subdivision (h)  
6 of Section 21647 of the Business and Professions Code, willfully  
7 refuses to consent to a statutory hold as provided by Section 21647  
8 of the Business and Professions Code or a search warrant for the  
9 business of the licensed pawnbroker or secondhand dealer has  
10 resulted in the seizure of the property subject to this section.

11 SEC. 6. Section 11108.5 of the Penal Code is amended to read:

12 11108.5. (a) If a law enforcement agency identifies serialized  
13 property or any property reported pursuant to Section 21628 of  
14 the Business and Professions Code that has been reported lost or  
15 stolen by the owner or a person entitled to possession of the  
16 property and the property has been entered into the appropriate  
17 Department of Justice automated property system pursuant to  
18 Section 11108, the agency shall notify the owner or person  
19 claiming to be entitled to possession of the property of the location  
20 of the property within 15 days of making the identification. If the  
21 location of the property was reported by a licensed pawnbroker or  
22 secondhand dealer pursuant to Section 21630 of the Business and  
23 Professions Code, notwithstanding the method by which the  
24 property was identified, notice shall be given to the party who  
25 reported the property lost or stolen pursuant to Section 21647 of  
26 the Business and Professions Code.

27 (b) If the property is in the custody of the law enforcement  
28 agency and it is determined that the property is no longer required  
29 for use as evidence in a criminal case, the property shall be made  
30 available to the person entitled to possession pursuant to Section  
31 1417.5 or if the property was found in the possession of a licensed  
32 pawnbroker or secondhand dealer, pursuant to Section 21647 of  
33 the Business and Professions Code.

34 (c) Subdivision (a) shall not apply to the return to an owner of  
35 a lost or stolen vehicle, as defined in Section 670 of the Vehicle  
36 Code *if the report of theft or loss of the vehicle into the automated*  
37 *property system preceded the report of the acquisition of property*  
38 *as set forth in Section 21628 of the Business and Professions Code*  
39 *by a licensed pawnbroker.*

1     SEC. 7. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution because  
3 the only costs that may be incurred by a local agency or school  
4 district will be incurred because this act creates a new crime or  
5 infraction, eliminates a crime or infraction, or changes the penalty  
6 for a crime or infraction, within the meaning of Section 17556 of  
7 the Government Code, or changes the definition of a crime within  
8 the meaning of Section 6 of Article XIII B of the California  
9 Constitution.

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