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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** AB 1294                      **Hearing Date:** June 25, 2019  
**Author:** Salas  
**Version:** May 28, 2019  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Criminal Profiteering*

### HISTORY

**Source:** Author

**Prior Legislation:** AB 1395 (Salas), 2016, held on Senate Appropriations Suspense File  
AB 160 (Dababneh), Ch. 427, Stats. 2015  
AB 443 (Alejo), 2015, held on Senate Appropriations Suspense File  
AB 1439 (Salas), Ch. 592, Stats. 2014

**Support:** Attorney General Xavier Becerra; Avenal Police Department; California District Attorneys Association; California Police Chiefs Association; California State Sheriffs' Association; Corcoran Police Department; Kern County Board of Supervisors; Kings County Sheriff's Office; Lemoore Police Department; Selma Police Department

**Opposition:** None known

**Assembly Floor Vote:** 76 - 0

### PURPOSE

***The purpose of this bill is add specified gambling crimes to the crimes included in "criminal profiteering activity," including crimes connected to operating a lottery or any slot or card machine, contrivance, appliance or mechanical device.***

*Existing law* establishes the "California Control Profits of Organized Crime Act" which provides the procedure for the forfeiture of property and proceeds acquired through a "pattern of criminal profiteering activity", as specified. (Pen. Code, § 186 *et seq.*)

*Existing law* declares that the Legislature 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. It is 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. (Pen. Code, § 186.1.)

*Existing law* defines "criminal profiteering activity" as "any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime for gambling, among other offenses." (Pen. Code, § 186.2, subd. (a).)

*Existing law* defines “pattern of criminal profiteering activity” to mean engaging in at least two incidents of criminal profiteering, as defined by this chapter, that meet the following requirements:

- 1) Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics;
- 2) Are not isolated events; and/or
- 3) Were committed as a criminal activity of organized crime. (Pen. Code, § 186.2, subd. (b)(1).)

*Existing law* defines “organized crime” as “a crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods and services such as gambling, among other offenses, or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, fraud against the beverage container recycling program, or systematically encumbering the assets of a business for the purpose of defrauding creditors.” “Organized crime” also means “a crime committed by a criminal street gang,” as defined. “Organized crime” also means “false or fraudulent activities, schemes, or artifices, as defined, and the theft of personal identifying information,” as defined. (Pen. Code, § 186.2, subd. (d).)

*Existing law* states that the following assets of any person who is convicted a specified underlying offense and of engaging in a pattern of criminal profiteering activity are subject to forfeiture:

- 1) Any property interest whether tangible or intangible, acquired through a pattern of criminal profiteering activity; and,
- 2) All proceeds of a pattern of criminal profiteering activity, which property shall include all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity. (Pen. Code, § 186.3)

*Existing law* states that, notwithstanding that no response or claim has been filed, in all cases where property is forfeited, as specified, and, if necessary, sold by the Department of General Services (DGS) or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

- 1) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all those lien holders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed;
- 2) To DGS or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized, as specified; and,

- 3) To the State's General Fund or local governmental entity, whichever prosecutes. (Pen. Code, § 186.8)

*Existing law* defines a “lottery” as any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known. (Pen. Code, § 319.)

*Existing law* specifies the following offenses related to gambling:

- It is a misdemeanor for a person to contrive, prepare, set up, propose, or draw any lottery. (Pen. Code, § 320.)
- It is a misdemeanor for a person to sell, give, or in any manner whatever, furnish or transfer to or for any other person any ticket, chance, share, or interest, or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in, or depending upon the event of any lottery. (Pen. Code, § 321.)
- It is a misdemeanor for a person to aid or assist in, either by printing, writing, advertising, publishing, or otherwise in setting up, managing, or drawing any lottery, or in selling or disposing of any ticket, chance, or share therein. (Pen. Code, § 322.)
- It is a misdemeanor for a person to open, set up, or keep, by himself or by any other person, any office or other place for the sale of, or for registering the number of any ticket in any lottery, or who, by printing, writing, or otherwise, advertise or publish the setting up, opening, or using of any such office. (Pen. Code, § 323.)
- It is a misdemeanor for a person to let, or permit to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing any lottery, or for the purpose of selling or disposing of lottery tickets. (Pen. Code, § 326.)
- It is a misdemeanor for a person who has in his or her possession as specified any slot or card machine, contrivance, appliance or mechanical device, upon the result of action of which money or other valuable thing is staked or hazarded, and which is operated, or played, by placing or depositing therein any coins, checks, slugs, balls, or other articles or device, or in any other manner and by means whereof, or as a result of the operation of which any merchandise, money, representative or articles of value, checks, or tokens, redeemable in or exchangeable for money or any other thing of value, is won or lost, or taken from or obtained from the machine, when the result of action or operation of the machine, contrivance, appliance, or mechanical device is dependent upon hazard or chance. (Pen. Code, § 330a.)
- It is a misdemeanor for a person to manufacture, repair, own, store, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to repair, sell, rent, lease, let on shares, lend or give away, or permit the operation, placement, maintenance, or keeping of, in any place, room, space, or building owned, leased, or occupied, managed, or controlled by that person, any slot machine or device, as defined. (Pen. Code, § 330b.)

- It is a misdemeanor for a person for any person to make or to permit the making of an agreement with another person regarding any slot machine or device, by which the user of the slot machine or device, as a result of the element of hazard or chance or other unpredictable outcome, may become entitled to receive money, credit, allowance, or other thing of value or additional chance or right to use the slot machine or device, or to receive any check, slug, token, or memorandum entitling the holder to receive money, credit, allowance, or other thing of value. (Pen. Code, § 330b.)
- Declares “punchboards” as defined to be an illegal slot machine or device and thus punishable as a misdemeanor. (Pen. Code, § 330c.)
- It is a misdemeanor for a person to control, as specified, any slot machine or device, and every person who makes or permits to be made with any person any agreement with reference to any slot machine or device, pursuant to which agreement the user thereof, as a result of any element of hazard or chance, may become entitled to receive anything of value or additional chance or right to use that slot machine or device, or to receive any check, slug, token, or memorandum, whether of value or otherwise, entitling the holder to receive anything of value. (Pen. Code, § 330.1.)
- Declares that the mere possession or control, either as owner, lessee, agent, employee, mortgagor, or otherwise of any slot machine or device is prohibited and penalized as a misdemeanor. Declares that every person who permits to be placed, maintained or kept in any room, space, enclosure, or building owned, leased or occupied by him, or under his management or control, whether for use or operation or for storage, bailment, safekeeping or deposit only, any slot machine or device is guilty of a misdemeanor. Further declares that any slot machine or device as defined is subject to confiscation. (Pen. Code, § 330.4.)

*This bill* adds the gambling related offenses described above within the definition of “gambling” for the purposes of the California Control of Profits of Organized Crime Act.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

Law enforcement is facing an epidemic of illicit gambling operations that are hosting a variety of unapproved electronic games such as sweepstakes cafes and arcade-style machines. These operations pose a serious danger to the community as they have been linked to increases in violent crime, vehicle theft, and property crimes. The operators who run these illegal businesses are not licensed, regulated, or subject to criminal background checks. In addition, these operations siphon revenue from state-licensed gambling businesses which reduces the funds that go to public education, health, and social programs. It is estimated that illegal sweepstakes café gambling collects more than \$10 billion dollars a year in illegal proceeds. Currently, law enforcement does not possess the tools to effectively shutter illegal gambling locations. Police departments have reported that they are unable to shut these operations down fast enough with new locations popping up every day. AB 1294 would provide the tools for law enforcement to more

effectively close these illegal operations by allowing them to seize the assets of convicted operators.

This bill is an expansion on previous legislation, AB 1439 (Salas, 2014), which made sweepstakes cafes illegal in California. However, this legislation did not completely solve the issue. Currently, law enforcement relies on small fines and equipment seizures which operators merely treat as a cost of doing business. In Bakersfield alone, local police made 51 arrests in one month at illegal internet casinos and other businesses with unapproved electronic gambling games. AB 1294 would remedy this situation by allowing law enforcement to target the bank accounts that contain the illicit profits of operators who are running illegal gambling enterprises using electronic-style machines.

From the outset, this bill has been and continues to be meant solely to target illicit gambling operations, not state-regulated and controlled entities, games or gaming activity licensed or approved through the California Gambling Control Commission or the Bureau of Gambling Control or authorized through the Compacts with the state. This bill would shutter more illegal sweepstakes cafes and would improve public safety for residents in California.

## 2. Background

The operation of a slot machine is illegal. (Pen. Code, § 330b.) “For purposes of this section, ‘slot machine or device’ means a machine, apparatus, or device that is adapted, or may readily be converted, for use in a way that, as a result of the insertion of any piece of money or coin or other object, or by any other means, the machine or device is caused to operate or may be operated, and by reason of any element of hazard or chance or of other outcome of operation unpredictable by him or her, the user may receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or additional chance or right to use the slot machine or device, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value, or which may be given in trade, irrespective of whether it may, apart from any element of hazard or chance or unpredictable outcome of operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.” (Pen. Code, § 330b, sub. (d).)

In recent years, new types of gambling devices that offer computerized sweepstakes games started popping up in internet cafes. “The cafes advertise and sell a product — usually Internet time or long-distance telephone minutes — that the gambler does not actually want. Along with that unwanted product, the customer receives a supposed bonus of “entries” in the Internet sweepstakes. With those entries, the customer can participate in Internet-based games at the cafe’s specially-programmed personal computers. Based on a random allocation of winning and losing entries, the customer may or may not win cash prizes through those games.” (American Gaming Association, *Internet Sweepstakes Cafes: Unregulated Storefront Gambling in the Neighborhood* (2014), p. 1.)

These internet café owners argued that these games were not illegal slot machines subject to Penal Code section 330b because (1) no coin or similar object was inserted into a slot by customers, and (2) the element of chance is not present because the results were predetermined by computer software, not by the machines themselves. (*People ex rel. Green v. Grewal* (2015) 61 Cal. 4th 544.) The California Supreme Court disagreed and held that these computerized

games fall under the definition of slot machine and are thus illegal. The Court found that the insertion of a PIN or account number or the swiping of a magnetic card at the computer terminal in order to activate or access the sweepstakes games and thereby use points received upon paying money at the register comes within the broad scope of the statute. (*Id.* at 559.) As for the element of chance, the court held that since customers could not exert any influence over the outcome of their sweepstakes entries, these systems are indeed based on chance or luck. (*Id.* at 560.)

### 3. Criminal Profiteering Asset Forfeiture Generally

Asset forfeiture provisions apply to assets acquired through a pattern of criminal profiteering activity. This requires a conviction for a “pattern of criminal profiteering activity” which means engaging in at least two incidents of the specific offenses listed in the definition of criminal profiteering that meet the following requirements: (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/or (c) Were committed as a criminal activity of organized crime. (Penal Code, § 186.2, sub. (b).) Criminal profiteering activity means any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under various criminal statutes. (Pen. Code, § 186.2, subd. (a).)

The act allows for forfeiture by petition of either a prosecuting district attorney or the state attorney general where certain prerequisites are met. The prosecuting agency must notify all third-parties who may have an interest in the property to be forfeited. The third-party may then file a verified claim of interest in the property with the superior court hearing the underlying criminal action. The court will then hold a forfeiture proceeding if the defendant is convicted of the underlying criminal charge. At the forfeiture hearing, the People have the burden of establishing beyond a reasonable doubt that the Defendant was engaged in a pattern of criminal profiteering activity and that the property acquired meets the requirements of section 186.3.

Penal Code section 186.3 subdivision (c) defines property subject to forfeiture as “[a]ll proceeds of a pattern of criminal profiteering activity, which property shall include all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity.” “Criminal profiteering activity,” in turn, is defined as “any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under any of the following sections” of an enumerated list including “gambling as defined in sections 337a through 337f, inclusive, and 337i . . .”.

(Corsiglia and Trager, *Money for Nothing: California’s Outdated Illegal Gambling Forfeiture Laws Provide Criminals Low Risk and High Rewards* (2018) 58 Santa Clara L.Rev. 213, 236-237.) This bill adds specified gambling provisions to Penal Code section 186.2 authorizing the use of asset forfeiture to seize the proceeds of these crimes when they meet the definition of “criminal profiteering activity”.

#### 4. Argument in Support

Kern County Board of Supervisors write in support of this bill:

Currently, law enforcement does not possess adequate support under the law to effectively shutter gambling locations. In fact, most offenses are only classified as misdemeanors and convicted operators are usually fined a few thousand dollars and continue to open up new illicit businesses throughout the state.

Existing law allows for forfeiture actions against the proceeds of “criminal profiteering activity” as defined in Penal Code section 186.2. The definition of “criminal profiteering activity” contained in section 186.2, subdivision (a)(8) includes “[g]ambling as defined in Sections 337a to 337f, inclusive, and section 337i . . .”. However, these statutes relate only to bookmaking crimes and do not extend to illegal slot machine or gambling device violations under Penal Code sections 330.1, 330a, and 330b (gambling device statutes).

Instead of relying on small fines and equipment seizures, AB 1294 would expand the definition of “criminal profiteering activity” in Penal Code section 186.2, subdivision (a)(8) to include various gambling device statutes. These changes will allow law enforcement to more effectively impact the industry of illicit gambling by enabling authorities to target the bank accounts that contain the illicit profits of operators who are running the illegal gambling enterprises, operating sweepstake cafes, and arcade-style gambling machines.

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