

ASSEMBLY BILL

No. 1278

Introduced by Assembly Members Ma, Lieber, and Smyth

February 23, 2007

An act to add Section 1670.7 to the Civil Code, to amend Section 236.1 of, and to add Chapter 10.7 (commencing with Section 186.15) to Title 7 of Part 1 of, the Penal Code, relating to seizure and crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1278, as introduced, Ma. Crimes.

Existing law provides that certain contract provisions are void as against public policy.

This bill would provide that any provision of a contract that purports to allow a deduction from a person's wages for the cost of transporting that person to the United States would be void as against public policy.

Existing law defines the offense of human trafficking, including certain factual elements that establish the offense. Existing law provides that the offense of human trafficking is punishable by imprisonment in the state prison for 3, 4, or 5 years.

This bill would provide that certain of the factual elements would not be required to be shown if the victim of the offense is a minor. The bill would also increase the penalty for human trafficking to imprisonment in the state prison for 3, 4, or 6 years.

Existing law provides a procedure for seizure and forfeiture of money and other assets or property in connection with criminal profiteering, as defined.

This bill would establish additional general procedures regarding seizure and forfeiture of assets, including distribution of assets to state and local government entities.

By imposing additional burdens on local governments, this 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 1670.7 is added to the Civil Code, to
2 read:

3 1670.7. Any provision of a contract which purports to allow a
4 deduction from a person’s wages for the cost of transporting that
5 person to the United States is void as against public policy.

6 SEC. 2. Section 236.1 of the Penal Code is amended to read:

7 236.1. (a) Any person who deprives or violates the personal
8 liberty of another with the intent to effect or maintain a felony
9 violation of Section 266, 266h, 266i, 267, 311.4, or 518, or to
10 obtain forced labor or services, is guilty of human trafficking.

11 (b) Except as provided in subdivision (c), a violation of this
12 section is punishable by imprisonment in the state prison for three,
13 four, or ~~five~~ six years.

14 (c) A violation of this section where the victim of the trafficking
15 was under 18 years of age at the time of the commission of the
16 offense is punishable by imprisonment in the state prison for four,
17 six, or eight years.

18 (d) (1) For purposes of this section, *if the victim is 18 years of*
19 *age or older*, unlawful deprivation or violation of the personal
20 liberty of another includes substantial and sustained restriction of
21 another’s liberty accomplished through fraud, deceit, coercion,
22 violence, duress, menace, or threat of unlawful injury to the victim
23 or to another person, under circumstances where the person
24 receiving or apprehending the threat reasonably believes that it is
25 likely that the person making the threat would carry it out.

1 (2) Duress includes knowingly destroying, concealing,
2 removing, confiscating, or possessing any actual or purported
3 passport or immigration document of the victim.

4 (3) *If the victim is under 18 years of age at the time of the*
5 *commission of the offense, the provisions of paragraph (1) need*
6 *not be proven by the prosecution.*

7 (e) For purposes of this section, “forced labor or services” means
8 labor or services that are performed or provided by a person and
9 are obtained or maintained through force, fraud, or coercion, or
10 equivalent conduct that would reasonably overbear the will of the
11 person.

12 (f) The Legislature finds that the definition of human trafficking
13 in this section is equivalent to the federal definition of a severe
14 form of trafficking found in Section 7102(8) of Title 22 of the
15 United States Code.

16 SEC. 3. Chapter 10.7 (commencing with Section 186.15) is
17 added to Title 7 of Part 1 of the Penal Code, to read:

18
19 CHAPTER 10.7. SEIZURE AND FORFEITURE

20
21 186.15. In order to ensure the proper utilization of the laws
22 permitting the seizure and forfeiture of property, the Legislature
23 hereby establishes the following guidelines:

24 (a) Law enforcement is the principal objective of forfeiture.
25 Potential revenue must not be allowed to jeopardize the effective
26 investigation and prosecution of criminal offenses, officer safety,
27 the integrity of ongoing investigations, or the due process rights
28 of citizens.

29 (b) No prosecutor’s or sworn law enforcement officer’s
30 employment or salary shall be made to depend upon the level of
31 seizures or forfeitures he or she achieves.

32 (c) Whenever appropriate, prosecutors should seek criminal
33 sanctions as to the underlying criminal acts which give rise to the
34 forfeiture action.

35 (d) Seizing agencies shall have a manual detailing the statutory
36 grounds for forfeiture and all applicable policies and procedures.
37 The manual shall include procedures for prompt notice to
38 interestholders, the expeditious release of seized property, where
39 appropriate, and the prompt resolution of claims of innocent
40 ownership.

1 (e) Seizing agencies shall implement training for officers
2 assigned to forfeiture programs, which training should be ongoing.

3 (f) Seizing agencies shall avoid any appearance of impropriety
4 in the sale or acquisition of forfeited property.

5 (g) Seizing agencies shall not put any seized or forfeited property
6 into service.

7 (h) Unless otherwise provided by law, forfeiture proceeds shall
8 be maintained in a separate fund or account subject to appropriate
9 accounting controls and annual financial audits of all deposits and
10 expenditures.

11 (i) Seizing agencies shall ensure that seized property is protected
12 and its value preserved.

13 (j) Although civil forfeiture is intended to be remedial by
14 removing the tools and profits from those engaged in the illicit
15 drug trade, it can have harsh effects on property owners in some
16 circumstances. Therefore, law enforcement shall seek to protect
17 the interests of innocent property owners, guarantee adequate
18 notice and due process to property owners, and ensure that
19 forfeiture serves the remedial purpose of the law.

20 186.16. Property subject to forfeiture under this division may
21 be seized by any peace officer upon process issued by any court
22 having jurisdiction over the property. Seizure without process may
23 be made if any of the following situations exist:

24 (a) The seizure is incident to an arrest or a search under a search
25 warrant.

26 (b) The property subject to seizure has been the subject of a
27 prior judgment in favor of the state in a criminal injunction or
28 forfeiture proceeding.

29 (c) There is probable cause to believe that property is subject
30 to forfeiture as set forth in subdivision (b) or (c) of Section 186.3.

31 (d) Real property subject to forfeiture may not be seized, absent
32 exigent circumstances, without notice to the interested parties and
33 a hearing to determine that seizure is necessary to preserve the
34 property pending the outcome of the proceedings. At the hearing,
35 the prosecution shall bear the burden of establishing that probable
36 cause exists for the forfeiture of the property and that seizure is
37 necessary to preserve the property pending the outcome of the
38 forfeiture proceedings. The court may issue seizure orders pursuant
39 to this section if it finds that seizure is warranted or pendente lite

1 orders pursuant to Section 186.18 if it finds that the status quo or
2 value of the property can be preserved without seizure.

3 (e) Where business records are seized in conjunction with the
4 seizure of property subject to forfeiture, the seizing agency shall,
5 upon request, provide copies of the records to the person, persons,
6 or business entity from whom the records were seized.

7 186.17. In all cases where the property is seized and forfeited
8 to the state or local governmental entity and, where necessary, sold
9 by the Department of General Services or local governmental
10 entity, the money forfeited or the proceeds of sale shall be
11 distributed by the state or local governmental entity as follows:

12 (a) Fifty percent to the state, local, or state and local law
13 enforcement entities that participated in the seizure distributed so
14 as to reflect the proportionate contribution of each agency.

15 (b) Twenty-four percent to the prosecutorial agency which
16 processed the forfeiture action.

17 (c) Twenty-five percent to the general fund of the county in
18 which the forfeiture action is prosecuted.

19 (d) One percent to a private nonprofit organization composed
20 of local prosecutors which shall use these funds for the exclusive
21 purpose of providing a statewide program of education and training
22 for prosecutors and law enforcement officers in ethics and the
23 proper use of laws permitting the seizure and forfeiture of assets.

24 (e) The court shall order the forfeiture of proceeds distributed
25 to the state, local, or state and local government entities as provided
26 in this section.

27 (f) For purposes of this section, “local government entity” means
28 any city, county, or city and county.

29 186.18. None of the funds distributed pursuant to subdivision
30 (a) of Section 186.17 shall be used to supplant any state or local
31 funds that would, in the absence of that subdivision, be made
32 available to support law enforcement efforts by those entities.

33 SEC. 4. If the Commission on State Mandates determines that
34 this act contains costs mandated by the state, reimbursement to
35 local agencies and school districts for those costs shall be made
36 pursuant to Part 7 (commencing with Section 17500) of Division
37 4 of Title 2 of the Government Code.