

AMENDED IN SENATE MAY 7, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2212

Introduced by Assembly Member Block

February 24, 2012

An act to amend *Section 3496 of the Civil Code*, and to amend Sections 11225 and 11230 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 2212, as amended, Block. Human trafficking: civil penalties.

Under existing law, a person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of specified sexual crimes, such as rape or pandering, or to obtain forced labor or services, is guilty of human trafficking, which is a felony punishable by imprisonment in the state prison for 3, 4, or 5 years.

Existing law classifies a building or place used for the purpose of illegal gambling, lewdness, assignation, or prostitution, and every building or place in or upon which acts of illegal gambling, lewdness, assignation, or prostitution, are held or occur, as a nuisance, which shall be enjoined, abated, and prevented, and for which damages may be recovered through a prescribed process. Civil penalties recovered through this process are divided between the Restitution Fund in the State Treasury and either the city attorney and city prosecutor or the district attorney, depending on who brought the action.

This bill would classify a building or place used for the purpose of, or in or upon which *are held or* occur acts of, human trafficking as a public nuisance. The bill would divide civil penalties collected through the nuisance provisions, in cases of human trafficking, between the

Victim-Witness Assistance Fund, to be available upon appropriation by the Legislature to the California Emergency Management Agency to fund grants for human trafficking victim services and prevention programs, and the city attorney and city prosecutor or district attorney, to be used exclusively for enforcement of nuisance abatement laws.

Existing law authorizes a court to award costs, including the costs of investigation and discovery, and reasonable attorney's fees to the prevailing party in cases in which a governmental agency seeks to enjoin the use of a building or place for, or to enjoin acts of, illegal gambling, lewdness, assignation, or prostitution.

The bill would make that provision applicable to cases in which a governmental agency seeks to enjoin the use of a building or place for, or to enjoin acts of, human trafficking.

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

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

1 SECTION 1. Section 3496 of the Civil Code is amended to
2 read:

3 3496. In any of the following described cases, the court may
4 award costs, including the costs of investigation and discovery,
5 and reasonable ~~attorneys'~~ attorney's fees, which are not
6 compensated for pursuant to some other provision of law, to the
7 prevailing party:

8 (a) In any case in which a governmental agency seeks to enjoin
9 the sale, distribution, or public exhibition, for commercial
10 consideration, of obscene matter, as defined in Section 311 of the
11 Penal Code.

12 (b) In any case in which a governmental agency seeks to enjoin
13 the use of a building or place for the purpose of illegal gambling,
14 lewdness, assignation, *human trafficking*, or prostitution; or any
15 case in which a governmental agency seeks to enjoin acts of illegal
16 gambling, lewdness, assignation, *human trafficking*, or prostitution
17 in or upon a building or place, as authorized in Article 2
18 (commencing with Section 11225) of Chapter 3 of Title 1 of Part
19 4 of the Penal Code.

20 (c) In any case in which a governmental agency seeks to enjoin
21 the use of a building or place, or seeks to enjoin in or upon any
22 building or place the unlawful sale, manufacture, service, storage,

1 or keeping or giving away of any controlled substance, as
2 authorized in Article 3 (commencing with Section 11570) of
3 Chapter 10 of Division 10 of the Health and Safety Code.

4 (d) In any case in which a governmental agency seeks to enjoin
5 the unlawful sale, service, storage, or keeping or giving away of
6 alcoholic liquor, as authorized in Article 1 (commencing with
7 Section 11200) of Chapter 3 of Title 1 of Part 4 of the Penal Code.

8 **SECTION 1.**

9 **SEC. 2.** Section 11225 of the Penal Code is amended to read:

10 11225. (a) (1) Every building or place used for the purpose
11 of illegal gambling as defined by state law or local ordinance,
12 lewdness, assignation, ~~human trafficking~~, or prostitution, and every
13 building or place in or upon which acts of illegal gambling as
14 defined by state law or local ordinance, lewdness, assignation,
15 ~~human trafficking~~, or prostitution, are held or occur, is a nuisance
16 which shall be enjoined, abated, and prevented, and for which
17 damages may be recovered, whether it is a public or private
18 nuisance.

19 (2) Nothing in this subdivision shall be construed to apply the
20 definition of a nuisance to a private residence where illegal
21 gambling is conducted on an intermittent basis and without the
22 purpose of producing profit for the owner or occupier of the
23 premises.

24 *(b) (1) Notwithstanding any other law, every building or place*
25 *used for the purpose of human trafficking, and every building or*
26 *place in or upon which acts of human trafficking are held or occur,*
27 *is a nuisance which shall be enjoined, abated, and prevented, and*
28 *for which damages may be recovered, whether it is a public or*
29 *private nuisance.*

30 *(2) For purposes of this subdivision, human trafficking is defined*
31 *in Section 236.1.*

32 ~~(b)~~

33 (c) (1) Every building or place used as a bathhouse which as a
34 primary activity encourages or permits conduct that according to
35 the guidelines of the federal Centers for Disease Control and
36 Prevention can transmit AIDS, including, but not limited to, anal
37 intercourse, oral copulation, or vaginal intercourse, is a nuisance
38 which shall be enjoined, abated, and prevented, and for which
39 damages may be recovered, whether it is a public or private
40 nuisance.

(2) For purposes of this subdivision, a “bathhouse” means a business which, as its primary purpose, provides facilities for a spa, whirlpool, communal bath, sauna, steam bath, mineral bath, mud bath, or facilities for swimming.

~~SEC. 2.~~

SEC. 3. Section 11230 of the Penal Code is amended to read:

11230. (a) (1) If the existence of a nuisance is established in an action as provided in this article, an order of abatement shall be entered as a part of the judgment in the case, directing the removal from the building or place of all fixtures, musical instruments and movable property used in conducting, maintaining, aiding, or abetting the nuisance, and directing the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and that it be kept closed for a period of one year, unless sooner released. If the court finds that any vacancy resulting from closure of the building or place may create a nuisance or that closure is otherwise harmful to the community, in lieu of ordering the building or place closed, the court may order the person who is responsible for the existence of the nuisance to pay damages in an amount equal to the fair market rental value of the building or place for one year to the city or county in whose jurisdiction the nuisance is located. The actual amount of rent being received for the rental of the building or place, or the existence of any vacancy therein, may be considered, but shall not be the sole determinant of the fair market rental value. Expert testimony may be used to determine the fair market rental value.

(2) While the order remains in effect as to closing, the building or place is and shall remain in the custody of the court.

(3) For removing and selling the movable property, the officer is entitled to charge and receive the same fees as he or she would for levying upon and selling like property on execution.

(4) For closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

(b) The court may assess a civil penalty not to exceed twenty-five thousand dollars (\$25,000) against any and all of the defendants, based upon the severity of the nuisance and its duration.

(c) ~~Unless~~ Except as otherwise specified by subdivision (d), one-half of the civil penalties collected pursuant to this section shall be deposited in the Restitution Fund in the State Treasury,

1 the proceeds of which shall be available for appropriation by the
2 Legislature to indemnify persons filing claims pursuant to Article
3 1 (commencing with Section 13959) of Chapter 5 of Part 4 of
4 Division 3 of Title 2 of the Government Code, and one-half of the
5 civil penalties collected shall be paid to the city in which the
6 judgment was entered, if the action was brought by the city attorney
7 or city prosecutor. If the action was brought by a district attorney,
8 one-half of the civil penalties collected shall be paid to the treasurer
9 of the county in which the judgment was entered.

10 (d) In cases involving human trafficking, one-half of the civil
11 penalties collected pursuant to this section shall be deposited in
12 the Victim-Witness Assistance Fund to be available for
13 appropriation by the Legislature to the California Emergency
14 Management Agency to fund grants for human trafficking victim
15 services and prevention programs provided by community-based
16 organizations. *The community-based organizations shall have*
17 *trained human trafficking caseworkers, as defined by Section*
18 *1038.2 of the Evidence Code.* The other one-half of the civil
19 penalties shall be paid to the city in which judgment was entered,
20 if the action was brought by a city attorney or city prosecutor. If
21 the action was brought by a district attorney, the one-half of the
22 civil penalty shall, instead, be paid to the treasurer of the county
23 in which judgment was entered. The funds directed to the city
24 attorney or the district attorney shall be for the exclusive use of
25 that agency for the enforcement of nuisance abatement laws.