

Assembly Bill No. 2212

CHAPTER 254

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.

[Approved by Governor September 7, 2012. Filed with
Secretary of State September 7, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2212, 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.

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.

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

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

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

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

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

(c) In any case in which a governmental agency seeks to enjoin the use of a building or place, or seeks to enjoin in or upon any building or place the unlawful sale, manufacture, service, storage, or keeping or giving away of any controlled substance, as authorized in Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code.

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

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

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

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

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

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

(c) (1) Every building or place used as a bathhouse which as a primary activity encourages or permits conduct that according to the guidelines of

the federal Centers for Disease Control and Prevention can transmit AIDS, including, but not limited to, anal intercourse, oral copulation, or vaginal intercourse, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private 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. 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) 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, the proceeds of which shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, and one-half of the civil penalties collected shall be paid to the city in which the judgment was entered, if the action was brought by the city attorney or city prosecutor. If the action was brought by a district attorney, one-half of the civil penalties

collected shall be paid to the treasurer of the county in which the judgment was entered.

(d) In cases involving human trafficking, one-half of the civil penalties collected pursuant to this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation by the Legislature to the California Emergency Management Agency to fund grants for human trafficking victim services and prevention programs provided by community-based organizations. The community-based organizations shall have trained human trafficking caseworkers, as defined by Section 1038.2 of the Evidence Code. The other one-half of the civil penalties shall be paid to the city in which judgment was entered, if the action was brought by a city attorney or city prosecutor. If the action was brought by a district attorney, the one-half of the civil penalty shall, instead, be paid to the treasurer of the county in which judgment was entered.