

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2466

Introduced by Assembly Member Blumenfield

February 24, 2012

An act to ~~amend Section 236.3 of, and to~~ add Section 236.6 to, the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 2466, as amended, Blumenfield. Human trafficking: seizure of assets.

Existing law makes it a felony, generally known as human trafficking, to deprive or violate the personal liberty of another with the intent to effect or maintain a felony violation of, among other crimes, pimping, pandering, and abducting a minor for the purpose of prostitution. Under existing law, the crime of human trafficking is punishable by a fine not to exceed \$1,000 or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. Existing law requires the court to order a person who is convicted of a crime to pay a restitution fine, as prescribed, and restitution to the victim or victims for the full amount of economic loss, unless the court finds compelling and extraordinary reasons for not doing so and states them on the record. Additionally, under existing law, real property used to facilitate the commission of human trafficking may be determined to be a nuisance and remedies may be imposed against that property.

~~This bill would allow real property and assets used to facilitate human trafficking to be determined to be a nuisance. The bill would authorize the prosecuting agency, at the same time as the filing of a complaint or indictment charging human trafficking, to file a petition for protective~~

relief necessary to preserve property or assets that could be used to pay for remedies relating to human trafficking, including, but not limited to, restitution; *and* fines; ~~and satisfaction of claims of nuisance.~~ The bill would specify the process by which a preliminary injunction, temporary restraining order, or sale of property or assets may be ordered.

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

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

1 SECTION 1. ~~Section 236.3 of the Penal Code is amended to~~
2 ~~read:~~

3 ~~236.3. Upon conviction of a violation of Section 236.1, real~~
4 ~~property or assets used to facilitate the commission of the offense~~
5 ~~may be determined to be a nuisance and the remedies imposed~~
6 ~~therefor as provided in Article 2 (commencing with Section 11225)~~
7 ~~of Chapter 3 of Title 1 of Part 4 shall apply.~~

8 ~~SEC. 2.~~

9 SECTION 1. Section 236.6 is added to the Penal Code, to read:

10 236.6. (a) To prevent dissipation or secreting of assets or
11 property, the prosecuting agency may, at the same time as or
12 subsequent to the filing of a complaint or indictment charging
13 human trafficking under Section 236.1, file a petition with the
14 criminal division of the superior court of the county in which the
15 accusatory pleading was filed, seeking a temporary restraining
16 order, preliminary injunction, the appointment of a receiver, or
17 any other protective relief necessary to preserve the property or
18 assets. The filing of the petition shall ~~commence~~ start a proceeding
19 that shall be pendent to the criminal proceeding and maintained
20 solely to effect the remedies available for this crime, including,
21 but not limited to, payment of restitution; *and* payment of fines;
22 ~~and charges of nuisance.~~ The proceeding shall not be subject to or
23 governed by the provisions of the Civil Discovery Act as set forth
24 in Title 4 (commencing with Section 2016.010) of Part 4 of the
25 Code of Civil Procedure. The petition shall allege that the
26 defendant has been charged with human trafficking under Section
27 236.1 and shall identify that criminal proceeding and the assets
28 and property to be affected by an order issued pursuant to this
29 section.

1 (b) *The prosecuting agency shall, by personal service or*
2 *registered mail, provide notice of the petition to every person who*
3 *may have an interest in the property specified in the petition.*
4 *Additionally, the notice shall be published for at least three*
5 *successive weeks in a newspaper of general circulation in the*
6 *county where the property affected by the order is located. The*
7 *notice shall state that any interested person may file a verified*
8 *claim with the superior court stating the nature and amount of his*
9 *or her claimed interest. The notice shall set forth the time within*
10 *which a claim of interest in the protected property shall be filed.*

11 ~~(b)~~

12 (c) *If the property to be preserved is real property, the*
13 *prosecuting agency shall record, at the time of filing the petition,*
14 *a lis pendens in each county in which the real property is situated*
15 *that specifically identifies the property by legal description, the*
16 *name of the owner of record, as shown on the latest equalized*
17 *assessment roll, and the assessor's parcel number.*

18 (d) *If the property to be preserved consists of assets under the*
19 *control of a banking or financial institution, the prosecuting*
20 *agency, at the time of filing the petition, may obtain an order from*
21 *the court directing the banking or financial institution to*
22 *immediately disclose the account numbers and value of the assets*
23 *of the accused held by the banking or financial institution. The*
24 *prosecuting agency shall file a supplemental petition, specifically*
25 *identifying which banking or financial institution accounts shall*
26 *be subject to a temporary restraining order, preliminary injunction,*
27 *or other protective remedy.*

28 ~~(e)~~

29 (e) *A person claiming an interest in the protected property or*
30 *assets may, at any time within 30 days from the date of the first*
31 *publication of the notice of the petition, or within 30 days after*
32 *receipt of actual notice, whichever is later, file with the superior*
33 *court of the county in which the action is pending a verified claim*
34 *stating the nature and amount of his or her interest in the property*
35 *or assets. A verified copy of the claim shall be served by the*
36 *claimant on the Attorney General or district attorney, as*
37 *appropriate.*

38 ~~(d) If an interested person, other than the defendant, has not~~
39 ~~filed a claim within the 30 days provided in subdivision (e), the~~
40 ~~court, upon motion, shall declare that the person has defaulted~~

1 upon his or her alleged interest, and that interest shall be subject
2 to forfeiture upon proof of the provisions of subdivision (a):

3 (e) ~~The defendant may admit or deny that the property or assets
4 are subject to forfeiture pursuant to the provisions of this chapter.
5 If the defendant fails to admit or deny or to file a claim of interest
6 in the property or assets, the court shall enter a response of denial
7 on behalf of the defendant.~~

8 (f) The imposition of fines and restitution shall be determined
9 by the superior court in which the underlying criminal offense is
10 sentenced. A judge who is assigned to the criminal division of the
11 superior court in the county where the petition is filed may issue
12 a temporary restraining order in conjunction with, or subsequent
13 to, the filing of an allegation pursuant to this section. A subsequent
14 hearing on the petition shall also be heard by a judge assigned to
15 the criminal division of the superior court in the county in which
16 the petition is filed. At the time of the filing of an information or
17 indictment in the underlying criminal case, a subsequent hearing
18 on the petition shall be conducted by the superior court judge
19 assigned to the underlying criminal case.

20 (g) Concurrent with or subsequent to the filing of the petition,
21 the prosecuting agency may move the superior court for, and the
22 superior court may issue, either of the following pendente lite
23 orders to preserve the status quo of the property or assets alleged
24 in the petition:

25 (1) An injunction to restrain any person from transferring,
26 encumbering, hypothecating, or otherwise disposing of the property
27 or assets.

28 (2) Appointment of a receiver to take possession of, care for,
29 manage, and operate the assets and properties so that they may be
30 maintained and preserved. The court may order that a receiver
31 appointed pursuant to this section shall be compensated for all
32 reasonable expenditures made or incurred by him or her in
33 connection with the possession, care, management, and operation
34 of property or assets that are subject to the provisions of this
35 section.

36 (h) The following procedures shall be followed in processing
37 the petition:

38 (1) No preliminary injunction shall be granted or receiver
39 appointed without notice to the interested parties and a hearing to
40 determine that the order is necessary to preserve the property or

1 assets, pending the outcome of the criminal proceedings, ~~and that~~
2 ~~there is probable cause to believe that the property or assets alleged~~
3 ~~in the forfeiture proceedings are proceeds or property interests~~
4 ~~forfeitable under this section.~~ However, a temporary restraining
5 order may be issued pending that hearing pursuant to the provisions
6 of Section 527 of the Code of Civil Procedure. The temporary
7 restraining order may be based upon the sworn declaration of a
8 peace officer with personal knowledge of the criminal investigation
9 that establishes probable cause to believe that human trafficking
10 has taken place and that the amount of restitution and fines
11 established pursuant to subdivision (f) exceeds or equals the worth
12 of the property or assets subject to the temporary restraining order.
13 The declaration may include the hearsay statements of witnesses
14 to establish the necessary facts. The temporary restraining order
15 may be issued without notice upon a showing of good cause to the
16 court.

17 (2) The defendant, or a person who has filed a verified claim
18 ~~as provided in paragraph (4) of subdivision (e),~~ shall have the right
19 to have the court conduct an order to show cause hearing within
20 10 days of the service of the request for a hearing upon the
21 prosecuting agency, in order to determine whether the temporary
22 restraining order should remain in effect, whether relief should be
23 granted from a lis pendens recorded pursuant to subdivision ~~(b)~~
24 ~~(c)~~, or whether an existing order should be modified in the interests
25 of justice. Upon a showing of good cause, the hearing shall be held
26 within two days of the service of the request for a hearing upon
27 the prosecuting agency.

28 (3) In determining whether to issue a preliminary injunction or
29 temporary restraining order in a proceeding brought by a
30 prosecuting agency in conjunction with or subsequent to the filing
31 of an allegation pursuant to this section, the court has the discretion
32 to consider any matter that it deems reliable and appropriate,
33 including hearsay statements, in order to reach a just and equitable
34 decision. The court shall weigh the relative degree of certainty of
35 the outcome on the merits and the consequences to each of the
36 parties of granting the interim relief. If the prosecution is likely to
37 prevail on the merits and the risk of the dissipation of assets
38 outweighs the potential harm to the defendants and the interested
39 parties, the court shall grant injunctive relief. The court shall give
40 significant weight to the following factors:

- 1 (A) The public interest in preserving the property or assets
2 pendente lite.
- 3 (B) The difficulty of preserving the property or assets pendente
4 lite where the underlying alleged crimes involve ~~issues of fraud~~
5 ~~and moral turpitude~~ *human trafficking*.
- 6 (C) The fact that the requested relief is being sought by a public
7 prosecutor on behalf of alleged victims of human trafficking.
- 8 (D) The likelihood that substantial public harm has occurred
9 where the human trafficking is alleged to have been committed.
- 10 (E) The significant public interest involved in compensating
11 victims of human trafficking and paying ~~court-imposed~~
12 ~~court-imposed~~ restitution and fines.
- 13 (4) The court, in making its orders, may consider a defendant's
14 request for the release of a portion of the property affected by this
15 section in order to pay reasonable legal fees in connection with
16 the criminal proceeding, necessary and appropriate living expenses
17 pending trial and sentencing, and for the purpose of posting bail.
18 The court shall weigh the needs of the public to retain the property
19 against the needs of the defendant to a portion of the property. The
20 court shall consider the factors listed in paragraph (3) prior to
21 making an order releasing property for these purposes.
- 22 (5) The court, in making its orders, shall seek to protect the
23 interests of innocent third persons, including an innocent spouse,
24 who were not involved in the commission of criminal activity.
- 25 (6) A petition filed pursuant to this section is part of the criminal
26 proceedings for purposes of appointment of counsel and shall be
27 assigned to the criminal division of the superior court of the county
28 in which the accusatory pleading was filed.
- 29 (7) Based upon a noticed motion brought by the receiver
30 appointed pursuant to paragraph (2) of subdivision (g), the court
31 may order an interlocutory sale of property named in the petition
32 when the property is liable to perish, to waste, or to be significantly
33 reduced in value, or when the expenses of maintaining the property
34 are disproportionate to the value of the property. The proceeds of
35 the interlocutory sale shall be deposited with the court or as
36 directed by the court pending determination of the proceeding
37 pursuant to this section.
- 38 (8) The court may make any orders that are necessary to preserve
39 the continuing viability of a lawful business enterprise that is

1 affected by the issuance of a temporary restraining order or
2 preliminary injunction issued pursuant to this section.

3 (9) In making its orders, the court shall seek to prevent the
4 property or asset subject to a temporary restraining order or
5 preliminary injunction from perishing, spoiling, going to waste,
6 or otherwise being significantly reduced in value. Where the
7 potential for diminution in value exists, the court shall appoint a
8 receiver to dispose of or otherwise protect the value of the property
9 or asset.

10 (10) A preservation order shall not be issued against an asset
11 of a business that is not likely to be dissipated and that may be
12 subject to levy or attachment to meet the purposes of this section.

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