AMENDED IN SENATE MAY 1, 2012

AMENDED IN SENATE APRIL 18, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL No. 1133

Introduced by Senator Leno

February 21, 2012

An act to amend Section 186.8 of, and to add Sections 236.6, 236.7, 236.8, 236.9, 236.10, and 236.11 to, the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 1133, as amended, Leno. Human trafficking.

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.

Existing law, the California Control of Profits of Organized Crime Act, defines criminal profiteering as any act committed or attempted, or any threat made for financial gain or advantage, that may be charged as a crime under specified provisions, including murder, money laundering, human trafficking, and crimes in which the perpetrator induces, encourages, persuades, threatens, or forces a person under 18 years of age to engage in a commercial sex act. Under existing law, property and assets acquired or received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity are subject to forfeit. The money proceeds from that forfeiture is distributed as prescribed, including, in any case involving human trafficking of minors for purposes of prostitution or lewd conduct or in

any case involving taking a person for prostitution in which the victim is a minor, depositing funds in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs and for grant to community-based organizations that serve minor victims of human trafficking.

This bill would remove the provision distributing funds from forfeiture to the Victim-Witness Assistance Fund as provided above. The bill would also authorize the forfeiture of vehicles, boats, airplanes, money, negotiable instruments, securities, real property, or other thing of value used for the purpose of facilitating the human trafficking involving a commercial sex act where the victim is an individual under 18 years of age at the time of the commission of the crime and *property acquired through human trafficking or which was received in exchange for the proceeds of human trafficking of a person under 18 years of age when the crime involved a commercial sex act. The bill* would prescribe the distribution of those funds, including to the General Fund of the state or local governmental entity, whichever prosecutes, and to the Victim-Witness Assistance Fund to be used upon appropriation for grants to community-based organizations that serve victims of human trafficking.

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

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

SECTION 1. Section 186.8 of the Penal Code is amended to read:

186.8. Notwithstanding that no response or claim has been filed pursuant to Section 186.5, in all cases where property is forfeited pursuant to this chapter and, if necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) 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 lienholders 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.

(b) To the Department of General Services 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 under this chapter.

(c) To the General Fund of the state or a general fund of a local governmental entity, whichever prosecutes.

(d) In any case involving a violation of subdivision (b) of Section 311.2, or Section 311.3 or 311.4, in lieu of the distribution of the proceeds provided for by subdivisions (b) and (c), the proceeds shall be deposited in the county children's trust fund, established pursuant to Section 18966 of the Welfare and Institutions Code, of the county that filed the petition of forfeiture. If the county does not have a children's trust fund, the funds shall be deposited in the State Children's Trust Fund, established pursuant to Section 18969 of the Welfare and Institutions Code.

(e) In any case involving crimes against the state beverage container recycling program, in lieu of the distribution of proceeds provided in subdivision (c), the proceeds shall be deposited in the penalty account established pursuant to subdivision (d) of Section 14580 of the Public Resources Code, except that a portion of the proceeds equivalent to the cost of prosecution in the case shall be distributed to the local prosecuting entity that filed the petition of forfeiture.

(f) (1) In any case described in paragraph (29) or (30) of subdivision (a) of Section 186.2, in lieu of the distribution provided for in subdivision (c), the proceeds shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs under Section 13837. Fifty percent of the funds deposited in the Victim-Witness Assistance Fund pursuant to this subdivision shall be granted to community-based organizations that serve minor victims of human trafficking.

(2) Notwithstanding paragraph (1), any proceeds specified in paragraph (1) that would otherwise be distributed to the General Fund of the state under subdivision (c) pursuant to a paragraph in

subdivision (a) of Section 186.2 other than paragraph (29) or (30) of subdivision (a) of Section 186.2, shall, except as otherwise required by law, continue to be distributed to the General Fund of the state as specified in subdivision (c).

SEC. 2. Section 236.6 is added to the Penal Code, to read:

236.6. (a) Any interest in a vehicle, boat, airplane, money, negotiable instruments, securities, real property, or other thing of value that was put to substantial use for the purpose of facilitating the crime of human trafficking that involves a commercial sex act, as defined in paragraph (2) of subdivision (g) of Section 236.1, where the victim was less than 18 years of age at the time of the commission of the crime, may be seized and ordered forfeited by the court upon the conviction of a person guilty of sex trafficking an individual under 18 years of age, pursuant to Section 236.1.

(b) In any case in which a defendant is convicted of human trafficking pursuant to Section 236.1 and an allegation is found to be true that the victim was a person under 18 years of age and the crime involved a criminal sex act, as defined in paragraph (2) of subdivision (g) of Section 236.1, the following assets shall be subject to forfeiture upon proof of the provisions of subdivision (d) of Section 236.8:

(1) Any property interest, whether tangible or intangible, acquired through human trafficking that involves a commercial sex act where the victim was less than 18 years of age at the time of the commission of the crime.

(2) All proceeds from human trafficking that involves a commercial sex act where the victim was less than 18 years of age at the time of the commission of the crime, which property shall include all things of value that may have been received in exchange for the proceeds immediately derived from the act.

~~(b)~~

(c) If *a* prosecuting agency petitions for forfeiture of an interest under subdivision (a) *or (b)*, the process prescribed in Sections 236.7 to 236.11, inclusive, shall apply, but no local or state prosecuting agency shall be required to petition for forfeiture in any case.

~~(c)~~

(d) Real property that is used as a family residence or for other lawful purposes, or that is owned by two or more persons, one of

whom had no knowledge of its unlawful use, shall not be subject to forfeiture.

~~(d)~~

(e) An interest in a vehicle that may not be lawfully driven with a class C, class M1, or class M2 license, as prescribed in Section 12804.9 of the Vehicle Code, may not be forfeited under this section if there is a community property interest in the vehicle by a person other than the defendant and the vehicle is the sole vehicle of this type available to the defendant's immediate family.

~~(e)~~

(f) Real property subject to forfeiture may not be seized, absent exigent circumstances, without notice to the interested parties and a hearing to determine that seizure is necessary to preserve the property pending the outcome of the proceedings. At the hearing, the prosecution shall bear the burden of establishing that probable cause exists for the forfeiture of the property and that seizure is necessary to preserve the property pending the outcome of the forfeiture proceedings. The court may issue a seizure order pursuant to this section if it finds that seizure is warranted or a pendente lite order pursuant to Section 236.9 if it finds that the status quo or value of the property can be preserved without seizure.

~~(f)~~

(g) For purposes of this section, no allegation or proof of a pattern of criminal profiteering activity is required.

SEC. 3. Section 236.7 is added to the Penal Code, to read:

236.7. (a) If the prosecuting agency, in conjunction with the criminal proceeding, files a petition of forfeiture with the superior court of the county in which the defendant has been charged with human trafficking that involves a commercial sex act, as defined in paragraph (2) of subdivision (g) of Section 236.1, where the victim was less than 18 years of age at the time of the commission of the crime, the prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds or instruments. The notice shall state that any interested party may file a verified claim with the superior court stating the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. If the notice cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the

county where the property is located. If the property alleged to be subject to forfeiture is real property, the prosecuting agency shall, at the time of filing the petition of forfeiture, record a lis pendens with the county recorder in each county in which the real property is situated that specifically identifies the real property alleged to be subject to forfeiture. The judgment of forfeiture shall not affect the interest in real property of any third party that was acquired prior to the recording of the lis pendens.

(b) All notices shall set forth the time within which a claim of interest in the property seized is required to be filed pursuant to Section 236.8.

SEC. 4. Section 236.8 is added to the Penal Code, to read:

236.8. (a) A person claiming an interest in the property, proceeds, or instruments may, at any time within 30 days from the date of the first publication of the notice of seizure or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property, proceeds, or instruments. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, as appropriate.

(b) (1) If, at the end of the time set forth in subdivision (a), an interested person, other than the defendant, has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest and the interest shall be subject to forfeiture upon proof of the provisions of subdivision (d).

(2) The defendant may admit or deny that the property is subject to forfeiture pursuant to the provisions of this chapter. If the defendant fails to admit or deny or to file a claim of interest in the property, proceeds, or instruments, the court shall enter a response of denial on behalf of the defendant.

(c) (1) The forfeiture proceeding shall be set for hearing in the superior court in which the underlying criminal offense will be tried.

(2) If the defendant is found guilty of the underlying offense, the issue of forfeiture shall be promptly tried, either before the same jury or before a new jury in the discretion of the court, unless waived by the consent of all parties.

(d) At the forfeiture hearing, the prosecuting agency shall have the burden of establishing beyond a reasonable doubt that the

property alleged in the petition comes within the provisions of Section 236.6.

(e) Unless the trier of fact finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person that the court determines is entitled to possession of that property. If the trier of fact finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person who has a valid interest in the property had actual knowledge that the property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the property released to the claimant.

SEC. 5. Section 236.9 is added to the Penal Code, to read:

236.9. (a) Concurrent with or subsequent to the filing of the petition, the prosecuting agency may move the superior court for, and the superior court may issue, the following pendente lite orders to preserve the status quo of the property alleged in the petition:

(1) An injunction to restrain anyone from transferring, encumbering, hypothecating, or otherwise disposing of that property.

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

(b) No preliminary injunction may be granted or receiver appointed without notice to the interested parties and a hearing to determine that an order is necessary to preserve the property, pending the outcome of the criminal proceedings, and that there is probable cause to believe that the property alleged in the forfeiture proceedings are proceeds, instruments, or property interests forfeitable under the provisions of Section 236.6. However, a temporary restraining order may issue pending that hearing pursuant to the provisions of Section 527 of the Code of Civil Procedure.

(c) Notwithstanding any other provision of law, the court in granting these motions may order a surety bond or undertaking to preserve the property interests of the interested parties.

(d) The court shall, in making its orders, seek to protect the interests of those who may be involved in the same enterprise as the defendant, but who were not involved in human trafficking that involves a commercial sex act, as defined in paragraph (2) of subdivision (g) of Section 236.1, where the victim was less than 18 years of age at the time of the commission of the crime.

SEC. 6. Section 236.10 is added to the Penal Code, to read:

236.10. (a) If the trier of fact at the forfeiture hearing finds that the alleged property, instruments, or proceeds ~~is~~ *are* forfeitable pursuant to Section 236.6 and the defendant was engaged in the human trafficking that involves a commercial sex act, as defined in paragraph (2) of subdivision (g) of Section 236.1, where the victim was less than 18 years of age at the time of the commission of the crime, the court shall declare that property or proceeds forfeited to the state or local governmental entity, subject to distribution as provided in Section 236.11. No property solely owned by a bona fide purchaser for value shall be subject to forfeiture.

(b) If the trier of fact at the forfeiture hearing finds that the alleged property is forfeitable pursuant to Section 236.6 but does not find that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract acquired that interest with actual knowledge that the property was to be used for a purpose for which forfeiture is permitted, and the amount due to that person is less than the appraised value of the property, that person may pay to the state or the local governmental entity that initiated the forfeiture proceeding, the amount of the registered owner's equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon payment, the state or local governmental entity shall relinquish all claims to the property. If the holder of the interest elects not to pay the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity and the ownership certificate shall be forwarded. The appraised value shall be determined as of the date judgment is entered either by agreement between the legal owner and the governmental entity involved, or,

if they cannot agree, by a court-appointed appraiser for the county in which the action is brought. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest.

(c) If the amount due to a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the governmental entity, the property shall be sold at public auction by the Department of General Services or by the local governmental entity. The seller shall provide notice of the sale by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place.

(d) Notwithstanding subdivision (c), a county may dispose of real property forfeited to the county pursuant to this chapter by the process prescribed in Section 25538.5 of the Government Code.

SEC. 7. Section 236.11 is added to the Penal Code, to read:

236.11. Notwithstanding that no response or claim has been filed pursuant to Section 236.8, in all cases where property is forfeited pursuant to this chapter and, if necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) 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 lienholders 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.

(b) To the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for necessary repairs, storage, or transportation of property seized under this chapter.

(c) (1) Fifty ~~Percent~~ *percent* to the General Fund of the state or local governmental entity, whichever prosecutes.

(2) Fifty percent to the Victim-Witness Assistance Fund to be used upon appropriation for grants to community-based organizations that serve victims of human trafficking.

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