

2020 Regular Session

SENATE BILL NO. 383

BY SENATOR REESE

SEX OFFENSES. Provides for the forfeiture of certain property related to sex crimes.
(8/1/20)

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AN ACT

To amend and reenact R.S. 15:539.1 and 539.3(A), relative to sex offenses; to provide for the forfeiture of personal property following conviction of certain sex offenses; to provide a procedure for the sale or auction of personal property forfeited following conviction of certain sex offenses; to provide a ranked order for payment of proceeds received from the sale or auction of personal property forfeited following the conviction of certain sex offenses; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 15:539.1 and 539.3(A) are hereby amended and reenacted to read as follows:

§539.1. Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property

A. Upon conviction of a human trafficking-related offense as defined in R.S. 46:1844(W)(2)(a), any felony sex offense as defined in R.S. 46:1844(W)(2)(b), R.S. 14:40.3 (cyberstalking), R.S. 14:81.1.1 (Sexting; prohibited acts; penalties), 14:283.2 (nonconsensual disclosure of a private image), 14:89 (crime against nature) as that offense existed prior to its repeal

1 by Acts 2014, No. 177 §2 and Acts 2014, No. 602, §7, eff. June 12, 2014, 14:78.1
2 (aggravated incest) as that offense existed prior to its repeal by Acts 2014, No.
3 177 §2 and Acts 2014, No. 602, §7, eff. June 12, 2014, 14:89 (crime against
4 nature), or R.S. 14:89.1 (aggravated crime against nature), the court shall order
5 that the personal property used in the commission of the offense be seized or
6 impounded and sold at public sale or auction by the district attorney or
7 otherwise distributed or disposed of in accordance with the provisions of this
8 Section. The personal property made subject to seizure and disposition
9 pursuant to this Section may include any electronic communication devices,
10 computers, computer related equipment, motor vehicles, photographic
11 equipment used to record or create still or moving visual images of any victim
12 that are recorded on paper, film, video tape, disc, or any other type of digital
13 recording media, or any other type of digital recording media, currency,
14 instruments, or securities. Forfeiture of personal property under the provisions
15 of this Section shall not preclude the application of any other remedy, civil or
16 criminal, under any other provision of law. All materials seized as evidence in
17 an offense enumerated in this Section shall constitute contraband. The court,
18 upon motion of the prosecuting attorney, after contradictory hearing, shall
19 order the destruction of the contraband when it is determined that it is no
20 longer needed as evidence.

21 ~~A.B. When personal property is forfeited under the provisions of R.S. 14:40.3~~
22 ~~(cyberstalking), R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of~~
23 ~~children for sexual purposes), R.S. 14:80 (felony carnal knowledge of a juvenile),~~
24 ~~R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving~~
25 ~~juveniles), R.S. 14:81.2 (molestation of a juvenile or a person with a physical or~~
26 ~~mental disability), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S.~~
27 ~~14:82.1 (prostitution; persons under eighteen; additional offenses), R.S. 14:83~~
28 ~~(soliciting for prostitutes), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2~~
29 ~~(promoting prostitution), R.S. 14:84 (pandering), R.S. 14:85 (letting premises for~~

1 ~~prostitution), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping~~
2 ~~a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282~~
3 ~~(operation of places of prostitution; prohibited; penalty),~~ **this Section**, the district
4 attorney shall authorize a public sale or a public auction conducted by a licensed
5 auctioneer, without appraisal, of that which is not required by law to be destroyed
6 and which is not harmful to the public. Any currency, instruments, or securities
7 forfeited shall be distributed or disposed of as provided in this Section.

8 ~~B.C.~~(1) The personal property shall be exempt from sale and the currency,
9 instruments, or securities shall be exempt from distribution or disposition if it was
10 stolen or if the possessor of the property was not the owner and the owner did not
11 know that the personal property was being used in the commission of the crime. If
12 this exemption is applicable, the personal property shall not be released until such
13 time as all applicable fees related to its seizure and storage are paid. An internet
14 service provider shall not be required to pay seizure or storage fees to secure the
15 release of equipment leased to an offender.

16 (2) Property subject to forfeiture pursuant to the provisions of this Section
17 shall be exempt from forfeiture when a spouse, co-owner, or interest holder in the
18 property establishes by sworn affidavit executed before a notary public the
19 following:

20 (a) That he had no knowledge of the commission of the criminal conduct and
21 could not have reasonably known of the conduct.

22 (b) That he did not consent to the use of property in the commission of the
23 criminal conduct.

24 (c) That he owns an interest in the property otherwise subject to forfeiture.

25 (3) The property of an internet service provider shall be exempt from
26 forfeiture.

27 (4) Intentionally falsifying information required by the provisions of
28 Paragraph (2) of this Subsection shall subject the affiant to prosecution under the
29 provisions of R.S. 14:125.

1 ~~C.D.~~ In addition, the personal property shall be exempt from sale and the
2 currency, instruments, or securities shall be exempt from distribution or disposition
3 if it is subject to a lien recorded prior to the date of the offense and if the applicable
4 fees related to the property's seizure and storage are paid by a valid lien holder.

5 ~~D.E.~~ The proceeds of the public sale or public auction shall pay the costs of
6 the public sale or public auction, court costs, and fees related to the seizure and
7 storage of the personal property **and shall then be applied to any restitution**
8 **granted to the victim**. Any proceeds remaining shall be distributed by the district
9 attorney in the following manner:

10 (1) Sixty percent to the seizing agency or agencies in an equitable manner.

11 (2) Twenty percent to the prosecuting agency.

12 (3) Twenty percent to the criminal court fund of the parish in which the
13 offender was prosecuted.

14 ~~E.F.~~ Notwithstanding Subsection ~~D.E.~~ of this Section, when the currency,
15 instruments, securities, or other property is forfeited ~~pursuant to the provisions~~
16 **following a conviction for a violation** of R.S. 14:46.2 (human trafficking), R.S.
17 14:46.3 (trafficking of children for sexual purposes), R.S. 14:81.1 (pornography
18 involving juveniles), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S.
19 14:82.1 (prostitution; persons under eighteen; additional offenses), R.S. 14:83
20 (soliciting for prostitutes), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2
21 (promoting prostitution), R.S. 14:84 (pandering), R.S. 14:85 (letting premises for
22 prostitution), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping
23 a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282
24 (operation of places of prostitution), the currency, instruments, and securities and
25 proceeds of the public sale or public auction shall ~~be applied first to any restitution~~
26 ~~granted to the victim, after the costs of the public sale or auction, court costs, and~~
27 ~~fees related to seizure and storage have been satisfied~~ **pay the costs of the public**
28 **sale or public auction, court costs, and fees related to the seizure and storage of**
29 **the personal property and shall then be applied to any restitution granted to the**

1 **victim.** Any remaining currency, instruments, securities, or proceeds shall be
2 distributed in the following manner:

3 (1) Twenty-five percent to the seizing agency or agencies allocated among
4 the seizing agencies in proportion to their participation in the management of the
5 investigation, seizure, and forfeiture.

6 (2) Twenty-five percent to the prosecuting agency.

7 (3) Fifty percent to the Exploited Children's Special Fund pursuant to R.S.
8 15:539.2.

9 * * *

10 §539.3 Mandatory restitution

11 A. A person convicted of a violation of ~~R.S. 14:46.2 (human trafficking), R.S.~~
12 ~~14:46.3 (trafficking of children for sexual purposes), R.S. 14:81.1 (pornography~~
13 ~~involving juveniles), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S.~~
14 ~~14:82.1 (prostitution; persons under eighteen; additional offenses), R.S. 14:83~~
15 ~~(soliciting for prostitutes), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2~~
16 ~~(promoting prostitution), R.S. 14:84 (pandering), R.S. 14:86 (enticing persons into~~
17 ~~prostitution), R.S. 14:104 (keeping a disorderly place), R.S. 14:105 (letting a~~
18 ~~disorderly place), and R.S. 14:282 (operation of places of prostitution) **an offense**~~
19 **enumerated in R.S. 15:539.1(A)** shall be ordered to pay mandatory restitution to the
20 victim, with the proceeds from property forfeited under R.S. 15:539.1 applied first
21 to payment of restitution, after the costs of the public sale or auction, court costs, and
22 fees related to seizure and storage have been satisfied. Restitution under this Section
23 shall include any of the following:

24 (1) Costs of medical and psychological treatment.

25 (2) Costs of necessary transportation and temporary housing.

26 (3) The greater of the value of the victim's labor as guaranteed under the
27 minimum wage and overtime provisions of the federal Fair Labor Standards Act; or
28 the gross income or value to the defendant of the victim's labor or services engaged
29 in by the victim while in the human trafficking situation. In the case of sex

1 trafficking, the victim shall be entitled to restitution for the income he would have
2 earned, had he not been victimized, as guaranteed under the minimum wage and
3 overtime provisions of the federal Fair Labor Standards Act.

4 (4) Return of property, cost of damage to property, or full value of property
5 if destroyed or damaged beyond repair.

6 (5) Expenses incurred by the victim and any household members or other
7 family members in relocating away from the defendant or the defendant's associates,
8 including but not limited to deposits for utilities and telephone service, deposits for
9 rental housing, temporary lodging and food expenses, clothing, and personal items.

10 Expenses incurred pursuant to this Section shall be verified by law enforcement to
11 be necessary for the personal safety of the victim or household or family members,
12 or by a mental health treatment provider to be necessary for the emotional well-being
13 of the victim.

14 * * *

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Yoursheka George.

DIGEST

SB 383 Original

2020 Regular Session

Reese

Present law requires personal property to be forfeited following the conviction of certain sex crimes.

Present law requires the district attorney to conduct a public sale or public auction to sell or auction property forfeited following the conviction of certain sex crimes otherwise required by law to be destroyed.

Proposed law removes misdemeanor crimes and includes all felony sex offense crimes from the list of crimes for asset forfeiture.

Proposed law provides for the destruction of forfeited property upon motion of the district attorney, and after a contradictory hearing, that the seized property is no longer needed as evidence.

Present law provides that the proceeds received from the sale or auction of the forfeited property be used to pay the costs of the public sale or auction, court costs, and fees related to seizure and storage of the property. Present law further provides that the restitution granted to the victim be paid after the foregoing costs are satisfied.

Proposed law retains present law.

Effective August 1, 2020.

(Amends R.S. 15:539.1 and 539.3(A))