

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)

1 AN ACT
2 To amend and reenact R.S. 15:539.1 and 539.3(A), and to repeal R.S. 14:40.3(C)(4)(a) and
3 (b), 14:46.2(B)(4)(a) and (b), 14:46.3(D)(3)(a) and (b), 14:80(D)(2)(a) and (b),
4 14:81(F), (G), and (H)(3)(a) and (b), 14:81.1(E)(5)(c) and (d) and (F)(1),
5 14:81.2(E)(1) and (2), 14:81.3(B)(4)(a) and (b) and (G) and (H), 14:82.1(D)(4)(a)
6 and (b), 14:83(B)(5)(a) and (b), 14:83.1(B)(4)(a) and (b), 14:83.2(B)(4)(a) and (b),
7 14:84(B)(4)(a) and (b), 14:85(B)(4)(a) and (b), 14:86(B)(2) and (3), 14:104(B)(4)(a)
8 and (b), 14:105(B)(4)(a) and (b), 14:282(B)(4)(a) and (b), and 14:283(D) and (E),
9 relative to sex offenses; to provide for the forfeiture of personal property following
10 conviction of certain sex offenses; to provide a procedure for the sale or auction of
11 personal property forfeited following conviction of certain sex offenses; to provide
12 a ranked order for payment of proceeds received from the sale or auction of personal
13 property forfeited following the conviction of certain sex offenses; and to provide
14 for related matters.

15 Be it enacted by the Legislature of Louisiana:
16 Section 1. R.S. 15:539.1 and 539.3(A) are hereby amended and reenacted to read as
17 follows:

1 §539.1. Forfeited property related to certain sex crimes; exempt property; allocation
2 of forfeited property

3 **A. Upon conviction of a human trafficking-related offense as defined in**
4 **R.S. 46:1844(W)(2)(a), any felony sex offense as defined in R.S.**
5 **46:1844(W)(2)(b), R.S. 14:40.3 (cyberstalking), R.S. 14:81.1.1 (Sexting;**
6 **prohibited acts; penalties), R.S. 14:283.2 (nonconsensual disclosure of a private**
7 **image), R.S. 14:78 (incest) as that offense existed prior to its repeal by Acts**
8 **2014, No. 177 §2 and Acts 2014, No. 602, §7, eff. June 12, 2014, R.S. 14:78.1**
9 **(aggravated incest) as that offense existed prior to its repeal by Acts 2014, No.**
10 **177 §2 and Acts 2014, No. 602, §7, eff. June 12, 2014, R.S. 14:89 (crime against**
11 **nature), or R.S. 14:89.1 (aggravated crime against nature), the court shall order**
12 **that the personal property used in the commission of the offense be seized or**
13 **impounded and sold at public sale or auction by the district attorney or**
14 **otherwise distributed or disposed of in accordance with the provisions of this**
15 **Section. The personal property made subject to seizure and disposition**
16 **pursuant to this Section may include any electronic communication devices,**
17 **computers, computer related equipment, motor vehicles, photographic**
18 **equipment used to record or create still or moving visual images of any victim**
19 **that are recorded on paper, film, video tape, disc, or any other type of digital**
20 **recording media, currency, instruments, or securities. Forfeiture of personal**
21 **property under the provisions of this Section shall not preclude the application**
22 **of any other remedy, civil or criminal, under any other provision of law. All**
23 **materials seized as evidence in an offense enumerated in this Section shall**
24 **constitute contraband. The court, upon motion of the prosecuting attorney,**
25 **after contradictory hearing, shall order the destruction of the contraband when**
26 **it is determined that it is no longer needed as evidence.**

27 ~~A.B.~~ When personal property is forfeited under the provisions of R.S. 14:40.3
28 (cyberstalking), R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of
29 children for sexual purposes), R.S. 14:80 (felony carnal knowledge of a juvenile);

1 ~~R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving~~
2 ~~juveniles), R.S. 14:81.2 (molestation of a juvenile or a person with a physical or~~
3 ~~mental disability), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S.~~
4 ~~14:82.1 (prostitution; persons under eighteen; additional offenses), R.S. 14:83~~
5 ~~(soliciting for prostitutes), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2~~
6 ~~(promoting prostitution), R.S. 14:84 (pandering), R.S. 14:85 (letting premises for~~
7 ~~prostitution), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping~~
8 ~~a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282~~
9 ~~(operation of places of prostitution; prohibited; penalty),~~ **this Section**, the district
10 attorney shall authorize a public sale or a public auction conducted by a licensed
11 auctioneer, without appraisal, of that which is not required by law to be destroyed
12 and which is not harmful to the public. Any currency, instruments, or securities
13 forfeited shall be distributed or disposed of as provided in this Section.

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

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

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

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

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

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

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

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

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

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

17 (2) Twenty percent to the prosecuting agency.

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

20 ~~E.F.~~ Notwithstanding Subsection ~~D.E.~~ of this Section, when the currency,
21 instruments, securities, or other property is forfeited ~~pursuant to the provisions~~
22 **following a conviction for a violation** of R.S. 14:46.2 (human trafficking), R.S.
23 14:46.3 (trafficking of children for sexual purposes), R.S. 14:81.1 (pornography
24 involving juveniles), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S.
25 14:82.1 (prostitution; persons under eighteen; additional offenses), R.S. 14:83
26 (soliciting for prostitutes), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2
27 (promoting prostitution), R.S. 14:84 (pandering), R.S. 14:85 (letting premises for
28 prostitution), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping
29 a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282

1 (operation of places of prostitution), the currency, instruments, and securities and
 2 proceeds of the public sale or public auction shall ~~be applied first to any restitution~~
 3 ~~granted to the victim, after the costs of the public sale or auction, court costs, and~~
 4 ~~fees related to seizure and storage have been satisfied~~ **pay the costs of the public**
 5 **sale or public auction, court costs, and fees related to the seizure and storage of**
 6 **the personal property and shall then be applied to any restitution granted to the**
 7 **victim.** Any remaining currency, instruments, securities, or proceeds shall be
 8 distributed in the following manner:

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

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

13 (3) Fifty percent to the Exploited Children's Special Fund pursuant to R.S.
 14 15:539.2.

15 * * *

16 §539.3 Mandatory restitution

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

1 (1) Costs of medical and psychological treatment.

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

3 (3) The greater of the value of the victim's labor as guaranteed under the
 4 minimum wage and overtime provisions of the federal Fair Labor Standards Act; or
 5 the gross income or value to the defendant of the victim's labor or services engaged
 6 in by the victim while in the human trafficking situation. In the case of sex
 7 trafficking, the victim shall be entitled to restitution for the income he would have
 8 earned, had he not been victimized, as guaranteed under the minimum wage and
 9 overtime provisions of the federal Fair Labor Standards Act.

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

12 (5) Expenses incurred by the victim and any household members or other
 13 family members in relocating away from the defendant or the defendant's associates,
 14 including but not limited to deposits for utilities and telephone service, deposits for
 15 rental housing, temporary lodging and food expenses, clothing, and personal items.
 16 Expenses incurred pursuant to this Section shall be verified by law enforcement to
 17 be necessary for the personal safety of the victim or household or family members,
 18 or by a mental health treatment provider to be necessary for the emotional well-being
 19 of the victim.

20 * * *

21 Section 2. R.S. 14:40.3(C)(4)(a) and (b), 14:46.2(B)(4)(a) and (b), 14:46.3(D)(3)(a)
 22 and (b), 14:80(D)(2)(a) and (b), 14:81(F), (G), and (H)(3)(a) and (b), 14:81.1(E)(5)(c) and
 23 (d) and (F)(1), 14:81.2(E)(1) and (2), 14:81.3(B)(4)(a) and (b) and (G) and (H),
 24 14:82.1(D)(4)(a) and (b), 14:83(B)(5)(a) and (b), 14:83.1(B)(4)(a) and (b), 14:83.2(B)(4)(a)
 25 and (b), 14:84(B)(4)(a) and (b), 14:85(B)(4)(a) and (b), 14:86(B)(2) and (3), 14:104(B)(4)(a)
 26 and (b), 14:105(B)(4)(a) and (b), 14:282(B)(4)(a) and (b), and 14:283(D) and (E) are hereby
 27 repealed in their entirety.

The original instrument was prepared by Yoursheka George. The following digest, which does not constitute a part of the legislative instrument, was prepared by Alden A. Clement, Jr.

DIGEST

SB 383 Reengrossed

2020 Regular Session

Reese

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

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 offenses otherwise required by present law to be destroyed.

Proposed law removes misdemeanor offenses and includes all felony sex offenses from the list of offenses subject to asset forfeiture and sale. Proposed law further 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.

Proposed law deletes from present law provisions relative to forfeiture and sale of property and disposition of evidence relative to certain sex offenses that are redundant with proposed law.

Effective August 1, 2020.

(Amends R.S. 15:539.1 and 539.3(A); repeals R.S. 14:40.3(C)(4)(a) and (b), 14:46.2(B)(4)(a) and (b), 14:46.3(D)(3)(a) and (b), 14:80(D)(2)(a) and (b), 14:81(F), (G), and (H)(3)(a) and (b), 14:81.1(E)(5)(c) and (d) and (F)(1), 14:81.2(E)(1) and (2), 14:81.3(B)(4)(a) and (b) and (G) and (H), 14:82.1(D)(4)(a) and (b), 14:83(B)(5)(a) and (b), 14:83.1(B)(4)(a) and (b), 14:83.2(B)(4)(a) and (b), 14:84(B)(4)(a) and (b), 14:85(B)(4)(a) and (b), 14:86(B)(2) and (3), 14:104(B)(4)(a) and (b), 14:105(B)(4)(a) and (b), 14:282(B)(4)(a) and (b), and 14:283(D) and (E))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Deletes from present law provisions relative to forfeiture and sale of property and disposition of evidence relative to certain sex offenses that are redundant with proposed law.