The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST 2017 Regular Session

SB 41 Original

Johns

<u>Present law</u> provides, in addition to any other penalties, for the forfeiture of certain personal property used in the commission of certain sex offenses. <u>Present law</u> further provides that the personal property made subject to seizure and sale pursuant to <u>present law</u> may include, but is not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

<u>Proposed law</u> retains <u>present law</u> and adds that, with regard to the crimes of human trafficking, trafficking of children for sexual purposes, pornography involving juveniles, prostitution involving persons under eighteen, soliciting for prostitutes, inciting prostitution, promoting prostitution, pandering, letting premises for prostitution, enticing persons into prostitution, keeping a disorderly place, letting a disorderly place, and operation of places of prostitution, the proceeds of such conduct are subject to forfeiture, including currency, instruments, or securities.

<u>Present law</u> provides that the district attorney is to authorize a public sale or a public auction conducted by a licensed auctioneer, without appraisal, of any forfeited personal property that is not required by present law to be destroyed and that is not harmful to the public.

<u>Proposed law</u> retains <u>present law</u> and adds that any currency, instruments, or securities forfeited are to be distributed or disposed of as provided in proposed law.

<u>Present law</u> provides that personal property is exempt from sale if it was stolen or if the possessor of the property was not the owner and the owner did not know that the personal property was being used in the commission of the crime. <u>Present law</u> further provides that if this exemption is applicable, the personal property is not to be released until such time as all applicable fees related to its seizure and storage are paid.

<u>Proposed law</u> retains <u>present law</u> and adds forfeited currency, instruments, and securities to this exemption.

<u>Present law</u> provides that personal property is exempt from sale if it is subject to a lien recorded prior to the date of the offense and if the applicable fees related to the property's seizure and storage are paid by a valid lien holder.

<u>Proposed law</u> retains <u>present law</u> and adds forfeited currency, instruments, and securities to this exemption.

Present law provides that the proceeds of the public sale or public auction are to be used to pay the

costs of the public sale or public auction, court costs, and fees related to the seizure and storage of the personal property, and any proceeds remaining are to be distributed by the district attorney in the following manner:

- (1) 60% to the seizing agency or agencies in an equitable manner.
- (2) 20% to the prosecuting agency.
- (3) 20% to the criminal court fund of the parish in which the offender was prosecuted.

<u>Present law</u> provides that when the property is forfeited pursuant to the penalty provisions for the crimes of human trafficking, trafficking of children for sexual purposes, pornography involving juveniles, computer-aided solicitation of a minor, prostitution involving persons under eighteen, soliciting for prostitutes, inciting prostitution, promoting prostitution, pandering, letting premises for prostitution, enticing persons into prostitution, keeping a disorderly place, letting a disorderly place, and operation of places of prostitution, the proceeds of the public sale or public auction are to be applied first to any restitution granted to the victim, after the costs of the public sale or auction, court costs, and fees related to seizure and storage have been satisfied. <u>Present law</u> further provides that any remaining proceeds are to be distributed in the following manner:

- (1) 25% to the seizing agency or agencies allocated among the seizing agencies in proportion to their participation in the management of the investigation, seizure, and forfeiture.
- (2) 25% to the prosecuting agency.
- (3) 50% to the Exploited Children's Special Fund.

<u>Proposed law</u> retains <u>present law</u> and adds that, notwithstanding the foregoing provisions of <u>present law</u>, any forfeited currency, instruments, or securities obtained under the provisions of <u>proposed law</u> are to be deposited in a Special Asset Forfeiture Fund that is to be established within the Special District Attorney Asset Forfeiture Trust Fund provided for in <u>present law</u>. <u>Proposed law</u> further provides that the court is to ensure the equitable distribution of the fund under and subject to the provisions of <u>proposed law</u> to the appropriate local, state, or federal law enforcement agency so as to reflect generally the contribution of that agency's participation in any of the activity that led to the seizure or forfeiture of the currency, instruments, or securities. <u>Proposed law</u> further provides that the office of the district attorney is to administer expenditures from the fund. <u>Proposed law</u> further provides that the fund is subject to public audit.

<u>Proposed law</u> provides that the Special Asset Forfeiture Fund is to be distributed in the following order of priority:

- (1) For satisfaction of any bona fide security interest or lien.
- (2) Thereafter, for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs.

- (3) The remaining funds are to be allocated as follows:
 - (a) 60% to the law enforcement agency or agencies making the seizure, such proceeds to be used in human trafficking enforcement, including but not limited to reward programs established by such agencies.
 - (b) 20% to the criminal court fund.
 - (c) 20% to any district attorney's office employing the attorneys that handle the forfeiture action for the state, which is to be paid into the district attorney's 12% fund to be used for public purposes including, but not limited to use for prosecution, rewards, support, and continuing legal education.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 14:46.2(B)(4), 46.3(D)(3), 81.1(E)(5)(c) and (d), 82.1(D)(4), 83(B)(4), 83.1(B)(4), 83.2(B)(4), 84(B)(4), 85(B)(4), 86(B)(2) and (3), 104(B)(4), 105(B)(4), and 282(B)(4), and R.S. 15:539.1(A), (B)(1), (C), (D)(intro para), and (E); adds R.S. 15:539.1(F))