

SENATE BILL NO. 383

BY SENATOR REESE

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AN ACT

To amend and reenact R.S. 15:539.1 and 539.3(A)(introductory paragraph), and to repeal R.S. 14:40.3(C)(4)(a) and (b), 46.2(B)(4)(a) and (b), 46.3(D)(3)(a) and (b), 80(D)(2)(a) and (b), 81(F), (G), and (H)(3)(a) and (b), 81.1(E)(5)(c) and (d) and (F)(1), 81.2(E)(1) and (2), 81.3(B)(4)(a) and (b), (G), and (H), 82.1(D)(4)(a) and (b), 83(B)(5)(a) and (b), 83.1(B)(4)(a) and (b), 83.2(B)(4)(a) and (b), 84(B)(4)(a) and (b), 85(B)(4)(a) and (b), 86(B)(2) and (3), 104(B)(4)(a) and (b), 105(B)(4)(a) and (b), 282(B)(4)(a) and (b), and 283(D) and (E), 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)(introductory paragraph) are hereby amended and reenacted to read as follows:

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

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

28 B. When personal property is forfeited under the provisions of R.S. 14:40.3
29 (~~cyberstalking~~), R.S. 14:46.2 (~~human trafficking~~), R.S. 14:46.3 (~~trafficking of~~
30 ~~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.

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

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

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

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

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

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

16 (2) Twenty percent to the prosecuting agency.

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

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

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

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

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

11 (3) Fifty percent to the Exploited Children's Special Fund pursuant to R.S.
 12 15:539.2.

13 * * *

14 §539.3 Mandatory restitution

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

28 * * *

29 Section 2. R.S. 14:40.3(C)(4)(a) and (b), 46.2(B)(4)(a) and (b), 46.3(D)(3)(a) and
 30 (b), 80(D)(2)(a) and (b), 81(F), (G), and (H)(3)(a) and (b), 81.1(E)(5)(c) and (d) and (F)(1),

1 81.2(E)(1) and (2), 81.3(B)(4)(a) and (b), (G) and (H), 82.1(D)(4)(a) and (b), 83(B)(5)(a) and
2 (b), 83.1(B)(4)(a) and (b), 83.2(B)(4)(a) and (b), 84(B)(4)(a) and (b), 85(B)(4)(a) and (b),
3 86(B)(2) and (3), 104(B)(4)(a) and (b), 105(B)(4)(a) and (b), 282(B)(4)(a) and (b), and
4 283(D) and (E) are hereby repealed in their entirety.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____