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AB-2105 Punitive damages: minors. (2017-2018)

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Assembly Bill No. 2105

CHAPTER 166

An act to add Section 3345.1 to the Civil Code, relating to punitive damages.

[Approved by Governor August 20, 2018. Filed with Secretary of State August 20, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2105, Maienschein. Punitive damages: minors.

Existing law provides that in specified civil actions brought by, on behalf of, or for the benefit of, senior citizens or disabled persons, as defined, the trier of fact must consider certain factors in determining the fine or penalty to be imposed. If the trier of fact makes an affirmative finding of any of these factors, existing law permits the imposition of a fine or penalty up to 3 times greater than authorized by statute, or, if the statute does not authorize a specific amount, up to 3 times greater than the amount the trier of fact would have imposed in the absence of that affirmative finding.

This bill would add similar provisions applicable to civil actions brought by, on behalf of, or for the benefit of, a minor or nonminor dependent, as defined, who is a victim of commercial sexual exploitation, as defined, against the person who committed the act and who is over 18 years of age, permitting imposition of a fine or penalty, payable to the victim, of up to 3 times greater than authorized by statute if specified findings are made by the trier of fact. The bill would also authorize a court, if no civil penalty is authorized by statute, to award a civil penalty not exceeding \$50,000, and not less than \$10,000, for each act of commercial sexual exploitation committed by the defendant upon making a specified affirmative finding, as specified.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3345.1 is added to the Civil Code, to read:

3345.1. (a) This section shall apply only in a civil action brought by, or on behalf of, or for the benefit of, a person who is a minor or nonminor dependent and is a victim of commercial sexual exploitation committed by a person who is over 18 years of age. For purposes of this section, the age of the victim, the status of the victim as a minor or nonminor dependent, and the age of the defendant is determined at the time of the defendant's act of commercial sexual exploitation of the victim.

(b) In a civil action brought by, on behalf of, or for the benefit of a minor, or nonminor dependent, against a person who engaged in any act of commercial sexual exploitation of a minor or nonminor dependent, whenever a trier of fact is authorized by a statute, other than subdivision (c), to impose either a fine, or a civil penalty or other penalty, or any other remedy the purpose or effect of which is to punish or deter, and the amount of the fine, penalty, or other remedy is subject to the trier of fact's discretion, the trier of fact shall consider all of the following factors, in addition to other appropriate factors, in determining the amount of fine, civil penalty, or other penalty, or other remedy to impose. If the trier of fact makes an affirmative finding in regard to one or more of the

following factors, it may impose a fine, civil penalty, or other penalty, or other remedy in an amount up to three times greater than authorized by the statute, or, if the statute does not authorize a specific amount, up to three times greater than the amount the trier of fact would impose in the absence of that affirmative finding:

(1) Whether the defendant's conduct was directed to more than one minor or nonminor dependent.

(2) Whether one or more minors or nonminor dependents suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(3) Whether the defendant knew or reasonably should have known that the victim was a minor or nonminor dependent. It shall not be a defense to imposition of fines, penalties, or other remedies pursuant to this paragraph that the defendant was unaware of the victim's age or status as a nonminor dependent at the time of the act.

(c) If the trier of fact is not authorized by statute to impose a civil penalty in an action described in subdivision (b), the court may award a civil penalty not exceeding fifty thousand dollars (\$50,000), and not less than ten thousand dollars (\$10,000), for each act of commercial sexual exploitation committed by the defendant upon making an affirmative finding in regard to one or more of the factors set forth in paragraphs (1) to (3), inclusive, of subdivision (b). This penalty may be imposed in addition to any other remedy available in law or in equity.

(d) Any penalty imposed pursuant to this section shall be paid to the victim of the act of sexual exploitation.

(e) It shall not be a defense to the imposition of fines or penalties pursuant to this section that the victim consented to the act of commercial sexual exploitation.

(f) If the victim is under 18 years of age, the court, in its discretion, may order that any penalty imposed pursuant to this section be held in trust for the victim and used exclusively for the benefit and well-being of the victim. When the victim reaches 18 years of age or is emancipated, the trust shall expire and any unspent remainder shall be the sole property of the victim.

(g) As used in this section, the following terms have the following meanings:

(1) "Commercial sexual exploitation" means an act committed for the purpose of obtaining property, money, or anything else of value in exchange for, or as a result of, a sexual act of a minor or nonminor dependent, including, but not limited to, an act that would constitute a violation of any of the following:

(A) Sex trafficking of a minor in violation of subdivision (c) of Section 236.1 of the Penal Code.

(B) Pimping of a minor in violation of Section 266h of the Penal Code.

(C) Pandering of a minor in violation of subdivision (b) of Section 266i of the Penal Code.

(D) Procurement of a child under 16 years of age for lewd and lascivious acts in violation of Section 266j of the Penal Code.

(E) Solicitation of a child for a purpose that is either in violation of subparagraph (A) or pursuant to paragraph (3) of subdivision (b) of Section 647 of the Penal Code.

(F) An act of sexual exploitation described in subdivision (c) or (d) of Section 11165.1 of the Penal Code.

(2) "Nonminor dependent" has the same meaning as in subdivision (v) of Section 11400 of the Welfare and Institutions Code.