

1 HB432
2 117703-2
3 By Representatives Williams (J), Coleman, Todd, Hilliard,
4 McClurkin, Ison, Gipson, England, Ball, Allen, Hubbard, Love,
5 Galliher, Hill, Ward, Canfield, Hall, Moore (P), Drake,
6 Clouse, McClendon, Mask, Faust and Williams (P)
7 RFD: Judiciary
8 First Read: 26-JAN-10

1 a. Causing or threatening to cause ~~serious harm~~
2 physical injury or mental suffering, to any person, physically
3 restraining or confining any person, or threatening to
4 physically restrain or confine any person or otherwise causing
5 the person performing or providing labor or services to
6 believe that the person or another person will suffer ~~serious~~
7 harm physical injury or mental suffering.

8 b. Implementing any scheme, plan, or pattern
9 intended to cause a person to believe that failure to perform
10 an act would result in ~~serious harm~~ physical injury, mental
11 suffering, to or physical restraint of any person.

12 c. Destroying, concealing, removing, confiscating,
13 or withholding from the person or another person, or
14 threatening to destroy, conceal, remove, confiscate, or
15 withhold from the person or another person, the person's or
16 any person's actual or purported government records,
17 immigration documents, identifying information, or personal or
18 real property.

19 d. Exposing or threatening to expose any fact or
20 information that if revealed would tend to subject a person to
21 criminal prosecution, criminal or immigration proceedings,
22 hatred, contempt, or ridicule.

23 e. Threatening to report the person or another
24 person to immigration officials or to other law enforcement
25 officials or otherwise blackmailing or extorting the person or
26 another person.

1 f. Facilitating or controlling a victim's access to
2 medical treatment or to a controlled substance, as the term is
3 defined in Section 20-2-2, Code of Alabama 1975.

4 g. Rape or sodomy or threatened rape or sodomy of
5 any person, as defined by Title 13A, Code of Alabama 1975.

6 (2) DECEPTION. Any of the following:

7 a. Creating or confirming an impression of any
8 existing fact or past event which is false and which the
9 accused knows or believes to be false.

10 b. Exerting financial control over the person or
11 another person by placing the person or another person under
12 the actor's control as a security or payment of a debt to the
13 extent that, if the value of those services as reasonably
14 assessed is not applied toward the liquidation of the debt or
15 the length and nature of those services are not respectively
16 limited and defined, the principal amount of the debt does not
17 reasonably reflect the value of the items or services for
18 which the debt was incurred, or preventing a person from
19 acquiring information pertinent to the disposition of the
20 debt.

21 c. Promising benefits or the performance of services
22 which the accused does not intend to deliver or perform or
23 knows will not be delivered or performed. Evidence of failure
24 to deliver benefits or perform services standing alone shall
25 not be sufficient to authorize a conviction under this
26 section.

1 d. Using any scheme, plan, or pattern, whether overt
2 or subtle, intended to cause any person to believe that, if
3 the person did not perform such labor, services, acts, or
4 performances, that person or another person would suffer
5 ~~serious harm or restraint~~ physical injury or mental suffering.

6 (3) HUMAN TRAFFICKING. Engaging in labor or sexual
7 servitude of another person.

8 (4) LABOR SERVITUDE. Work or service of economic or
9 financial value which is performed or provided by another
10 person and is induced or obtained by threat coercion, or
11 deception.

12 (5) MENTAL SUFFERING. A high degree of mental pain,
13 emotional disturbances, such as distress, anxiety, public
14 humiliation, or psychosomatic physical symptoms. It is more
15 than mere disappointment, anger, resentment, wounded pride, or
16 embarrassment and must be a direct result of the coercion and
17 deception of being a victim of human trafficking.

18 (6) PHYSICAL INJURY. Impairment of physical
19 condition or substantial pain.

20 ~~(5)~~ (7) SEXUAL SERVITUDE. Any of the following:

21 a. Any sexual conduct as defined in subdivision (3)
22 of Section 14-11-30, Code of Alabama 1975, for which anything
23 of value is directly or indirectly given, promised to, or
24 received by any person, which conduct is induced or obtained
25 by coercion or deception ~~or which conduct is induced or~~
26 ~~obtained~~ from a person.

1 b. Sexual conduct includes, sexually explicit
2 performances, meaning an act or show, intended to arouse,
3 satisfy the sexual desires of, or appeal to the prurient
4 interests of patrons or viewers, whether public or private,
5 live, photographed, recorded, videotaped, or projected over
6 the Internet, and commercial sex acts, meaning any sex act on
7 account of which anything of value is given, promised to, or
8 received, directly or indirectly, by any person.

9 ~~(6)~~ (8) TRAFFICKING VICTIM. Any person, including
10 minors, subjected to labor servitude, sexual servitude, or
11 involuntary servitude.

12 Section 2. (a) A person commits the crime of human
13 trafficking in the first degree if:

14 (1) He or she knowingly subjects another person to
15 labor servitude or sexual servitude through use of coercion or
16 deception.

17 (2) He or she knowingly obtains, recruits, entices,
18 solicits, induces, threatens, isolates, harbors, holds,
19 restrains, transports, provides, or maintains any minor for
20 the purpose of causing a minor to engage in sexual servitude.

21 (3) For purposes of Section 2, it is not required
22 that the defendant have knowledge of the victim's age, nor is
23 reasonable mistake of age a defense to liability under this
24 provision.

25 (4) A corporation may be prosecuted for human
26 trafficking in the first degree for an act or omission only if

1 an agent of the corporation performs the conduct which is an
2 element of the crime while acting within the scope of his or
3 her office or employment and on behalf of the corporation, and
4 the commission of the crime was either authorized, requested,
5 commanded, performed, or within the scope of the person's
6 employment on behalf of the corporation or constituted a
7 pattern of ~~human trafficking in the first degree~~ conduct that
8 an agent of the company knew or should have known was
9 occurring.

10 (5) Any person who obstructs, or attempts to
11 obstruct, or in any way interferes with or prevents the
12 enforcement of this section, shall be guilty of a Class C
13 ~~misdemeanor~~ felony.

14 (b) Human trafficking in the first degree is a Class
15 A felony.

16 Section 3. (a) A person commits the crime of human
17 trafficking in the second degree if:

18 (1) He or she knowingly benefits, financially or by
19 receiving anything of value, from participation in a venture
20 or engagement for the purpose of sexual servitude or labor
21 servitude.

22 (2) He or she recruits, entices, solicits, induces,
23 harbors, transports, holds, restrains, provides, maintains,
24 subjects, or obtains by any means another person for the
25 purpose of labor servitude or sexual servitude.

1 (3) A corporation may be prosecuted for human
2 trafficking in the second degree for an act or omission only
3 if an agent of the corporation performs the conduct which is
4 an element of the crime while acting within the scope of his
5 or her office or employment and on behalf of the corporation,
6 and the commission of the crime was either authorized,
7 requested, commanded, performed, or within the scope of the
8 person's employment on behalf of the corporation or
9 constituted a pattern of human trafficking in the second
10 degree that an agent of the company knew or should have known
11 was occurring.

12 (4) Any person who obstructs, or attempts to
13 obstruct, or in any way interferes with or prevents the
14 enforcement of this section, shall be guilty of a Class C
15 misdemeanor.

16 (b) Human trafficking in the second degree is a
17 Class B felony, except that if the victim is under the age of
18 18 years, the term of imprisonment may not be less than 10
19 years.

20 Section 4. Evidence of the following facts or
21 conditions shall not constitute a defense in a prosecution for
22 human trafficking in the first or second degree, nor shall the
23 evidence preclude a finding of a violation:

24 (1) A victim of human trafficking's sexual history
25 or history of commercial sexual activity.

1 (2) A victim of human trafficking's connection by
2 blood or marriage to a defendant in the case or to anyone
3 involved in the victim's trafficking.

4 (3) Consent of or permission by a victim of human
5 trafficking or anyone else on the victim's behalf to any
6 commercial sex act or sexually explicit performance.

7 (4) Age of consent to sex, an act defined by
8 paragraph b. of subdivision (5) of Section 1 of the definition
9 for sexual servitude, legal age of marriage, or other
10 discretionary age.

11 (5) Mistake as to the victim of human trafficking's
12 age, even if the mistake is reasonable.

13 Section 5. (a) A person or entity convicted of
14 violations of this act shall be ordered to pay mandatory
15 restitution to the victim promptly upon the conviction of the
16 defendant, with the proceeds from property forfeited under
17 ~~this subsection~~ Section 6 applied first to payment of
18 restitution.

19 (1) Costs of medical and psychological treatment,
20 including physical and occupational therapy and
21 rehabilitation, at the court's discretion.

22 (2) Costs of necessary transportation, temporary
23 housing, and child care, at the court's discretion.

24 (3) ~~Attorney's~~ Cost of the investigation and
25 prosecution, attorney's fees, and other court-related costs
26 such as victim advocate fees.

1 (4) The greater of (i) the value of the human
2 trafficking victim's labor as guaranteed under the minimum
3 wage and overtime provisions of the Fair Labor Standards Act
4 (FLSA); or (ii) the gross income or value to the defendant of
5 the victim's labor servitude or sexual servitude engaged in by
6 the victim while in the human trafficking situation.

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

10 ~~(6) Compensation for emotional distress, pain, and~~
11 ~~suffering.~~

12 ~~(7)~~ (6) Expenses incurred by a victim and any
13 household members or other family members in relocating away
14 from the defendant or his or her associates, including, but
15 not limited to, deposits for utilities and telephone service,
16 deposits for rental housing, temporary lodging and food
17 expenses, clothing, and personal items. Expenses incurred
18 pursuant to this section shall be verified by law enforcement
19 to be necessary for the personal safety of the victim or
20 household or family members, or by a mental health treatment
21 provider to be necessary for the emotional well-being of the
22 victim.

23 ~~(8) Repatriation of the victim to his or her home~~
24 ~~country.~~

25 ~~(9)~~ (7) Any and all other losses suffered by the
26 victim as a result of violations of this act.

1 (b) For purposes of this section, the return of the
2 victim to his or her home country or other absence of the
3 victim from the jurisdiction shall not prevent the victim from
4 receiving restitution.

5 Section 6. A person who commits the offense of human
6 trafficking in the first degree or human trafficking in the
7 second degree shall forfeit to the State of Alabama any
8 profits or proceeds and any interest in property that he or
9 she has acquired or maintained that the sentencing court
10 determines to have been acquired or maintained as a result of
11 committing human trafficking in the first degree or human
12 trafficking in the second degree ~~shall qualify as offenses for~~
13 ~~forfeiture~~. Any assets seized shall first be used to pay
14 restitution to trafficking victims and subsequently to pay any
15 damages awarded to victims in a civil action. Any remaining
16 assets shall go toward the cost of the investigation and
17 prosecution and the remaining assets shall be remitted to
18 funding the Alabama Crime ~~Victim's~~ Victims Compensation Fund.

19 Section 7. ~~(a)~~ An individual who is a victim of
20 human trafficking may bring a civil action in the appropriate
21 state court. The court may award actual damages, compensatory
22 damages, punitive damages, injunctive relief, and any other
23 appropriate relief. A prevailing plaintiff shall also be
24 awarded attorney's fees and costs. Treble damages shall be
25 awarded on proof of actual damages where defendant's acts were
26 willful and malicious.

1 ~~(b) If a person entitled to sue is under a~~
2 ~~disability at the time the cause of action accrues, so that it~~
3 ~~is impossible or impracticable for him or her to bring an~~
4 ~~action, then the time of the disability is not part of the~~
5 ~~time limited for the commencement of the action. Disability~~
6 ~~includes, but is not limited to, insanity, imprisonment, or~~
7 ~~other incapacity or incompetence.~~

8 ~~(c) A defendant is estopped from asserting a defense~~
9 ~~of the statute of limitations when the expiration of the~~
10 ~~statute is due to conduct by the defendant inducing the~~
11 ~~plaintiff to delay the filing of the action or placing the~~
12 ~~plaintiff under duress.~~

13 Section 8. ~~An action~~ Any civil action or criminal
14 prosecution for human trafficking in the first degree or human
15 trafficking in the second degree shall be without a statute of
16 limitations.

17 Section 9. In ~~any~~ a prosecution for prostitution of
18 a human trafficking victim for the victim's illegal acts
19 engaged in or performed as a result of labor servitude or
20 sexual servitude, it shall be an affirmative defense that the
21 person was a victim of human trafficking. ~~A victim of human~~
22 ~~trafficking is not criminally liable for any illegal acts~~
23 ~~engaged in or performed as a result of labor servitude or~~
24 ~~sexual servitude committed as a direct result of, incident to,~~
25 ~~or related to, being subjected to human trafficking.~~

1 Section 10. (a) ~~Prosecuting~~ District attorneys and
2 the Attorney General shall have concurrent authority to
3 prosecute any criminal cases arising under this act and to
4 perform any duty that necessarily appertains to this section.

5 (b) Each violation under this act shall constitute a
6 separate offense.

7 Section 11. Although this bill would have as its
8 purpose or effect the requirement of a new or increased
9 expenditure of local funds, the bill is excluded from further
10 requirements and application under Amendment 621, now
11 appearing as Section 111.05 of the Official Recompilation of
12 the Constitution of Alabama of 1901, as amended, because the
13 bill defines a new crime or amends the definition of an
14 existing crime.

15 Section 12. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 26-JAN-10

Read for the second time and placed
on the calendar with 1 substitute
and 04-FEB-10

Read for the third time and passed
as amended 04-MAR-10

Yeas 102, Nays 0, Abstains 0

Greg Pappas
Clerk