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3 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR HB305

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8 SYNOPSIS: Under existing law, sexual servitude is
9 defined to require the use of deception or
10 coercion.

11 This bill would remove the requirement of
12 deception or coercion if the sexual conduct is with
13 a minor and further define the crime of human
14 trafficking in the first degree.

15 Under existing law, a victim of human
16 trafficking may bring a private civil action.

17 This bill would further provide for the
18 private right of action by establishing venue,
19 authorizing damages, and awarding attorney's fees
20 and costs to a prevailing plaintiff.

21 This bill would provide a right of action by
22 the Attorney General to enforce the human
23 trafficking laws and to recover damages for victims
24 of human trafficking.

25 Under existing law, there is a limitations
26 period for human trafficking actions.

1 This bill would exempt the Attorney General
2 from the limitations period.

3 This bill would authorize the Attorney
4 General to issue subpoenas to compel a person to
5 appear, produce evidence, and produce testimony in
6 the aid of any investigation of human trafficking.

7 This bill would provide a civil penalty for
8 violations of the human trafficking laws.

9 Under existing law, it is a crime to commit
10 an act of prostitution, solicit or compel a person
11 to participate in prostitution, aid another in
12 engaging in prostitution, or provide a premises for
13 prostitution.

14 This bill would make it a crime to engage in
15 an act of prostitution with a minor, solicit or
16 compel a minor to participate in prostitution, aid
17 another in engaging in prostitution with a minor,
18 or provide a premises for engaging in prostitution
19 with a minor.

20 Under existing law, a defendant accused of
21 human trafficking is expressly prohibited from
22 asserting a mistake of age defense.

23 This bill would also prohibit a defendant
24 accused of engaging in an act of prostitution with
25 a minor from asserting a mistake of age defense.

26 This bill would provide for an additional
27 fine for persons convicted of human trafficking to

1 be used to compensate the victims of human
2 trafficking.

3 This bill would provide for the expungement
4 of certain crimes committed by victims of human
5 trafficking under certain conditions.

6 This bill would provide that human
7 trafficking offenses and certain prostitution
8 offenses may only be prosecuted in circuit or
9 district court.

10 Under existing law, the Alabama Board of
11 Massage Therapy may conduct a criminal history
12 check of massage therapists under certain
13 circumstances.

14 This bill would require the board to conduct
15 a criminal history check for every person applying
16 for a license to become a message therapist and for
17 every licensee applying to renew his or her
18 license.

19 This bill would provide that allowing an
20 individual to remain in a massage therapy
21 establishment overnight is misconduct and is
22 grounds for a suspension of the massage therapist's
23 license.

24 This bill would provide that proof of sexual
25 misconduct by a massage therapist with a client is
26 misconduct and is grounds for a suspension or
27 revocation of the therapist's license.

1 This bill would require a massage therapist
2 to file a report with the Alabama Board of Massage
3 Therapy if he or she has a reasonable belief that
4 another massage therapist has engaged in sexual
5 misconduct with a client and would provide
6 penalties for failure to report.

7 This bill would require the Alabama Board of
8 Massage Therapy to refer any incidents of alleged
9 misconduct to the local district attorney for
10 investigation and prosecution.

11 Amendment 621 of the Constitution of Alabama
12 of 1901, now appearing as Section 111.05 of the
13 Official Recompilation of the Constitution of
14 Alabama of 1901, as amended, prohibits a general
15 law whose purpose or effect would be to require a
16 new or increased expenditure of local funds from
17 becoming effective with regard to a local
18 governmental entity without enactment by a 2/3 vote
19 unless: it comes within one of a number of
20 specified exceptions; it is approved by the
21 affected entity; or the Legislature appropriates
22 funds, or provides a local source of revenue, to
23 the entity for the purpose.

24 The purpose or effect of this bill would be
25 to require a new or increased expenditure of local
26 funds within the meaning of the amendment. However,
27 the bill does not require approval of a local

1 governmental entity or enactment by a 2/3 vote to
2 become effective because it comes within one of the
3 specified exceptions contained in the amendment.
4

5 A BILL
6 TO BE ENTITLED
7 AN ACT
8

9 Relating to human trafficking and offenses against
10 minors; to amend Sections 13A-6-151 and 13A-6-152, Code of
11 Alabama 1975, to provide further for the definition of sexual
12 servitude and to provide further for the crime of human
13 trafficking in the first degree; to amend Section 13A-6-157,
14 Code of Alabama 1975, to provide further for the private right
15 of action of a victim of human trafficking; to add Section
16 13A-6-157.1 to the Code of Alabama 1975, to provide a right of
17 action by the Attorney General to enforce the human
18 trafficking laws and to recover damages for victims of human
19 trafficking; to amend Section 13A-6-158, Code of Alabama 1975,
20 to provide that the limitations period does not apply to the
21 Attorney General; to add Sections 13A-6-161 and 13A-6-162 to
22 the Code of Alabama 1975, to authorize the issuance of and
23 enforcement of subpoenas when investigating allegations of
24 human trafficking and to provide a civil penalty for
25 violations; to add Section 13A-12-121.1 to the Code of Alabama
26 1975, to establish the crime of engaging in an act of
27 prostitution with a minor; to amend Section 13A-12-122, Code

1 of Alabama 1975, to provide further criminal penalties for
2 human trafficking; to add Sections 13A-12-124 and 13A-12-125
3 to the Code of Alabama 1975, to prohibit a defendant accused
4 of engaging in an act of prostitution with a minor from
5 asserting a mistake of age defense and to provide an
6 additional fine; to amend Sections 15-27-1 and 15-27-2, Code
7 of Alabama 1975, to provide further for the expungement of
8 certain crimes committed by victims of human trafficking under
9 certain conditions; to provide that human trafficking offenses
10 and certain prostitution offenses may only be prosecuted in
11 circuit or district court; to amend Sections 34-43-12,
12 34-43-13, 34-43-14, 34-43-15, Code of Alabama 1975, to require
13 the Alabama Board of Massage Therapy to conduct criminal
14 history background checks under certain circumstances and to
15 set the fee for the background check; to further provide for
16 the suspension or revocation of a license issued under the
17 Alabama Massage Therapy Licensure Act; to provide that a
18 massage therapist licensee who allows an individual to remain
19 in a massage therapy establishment overnight is misconduct
20 subject to disciplinary action; to require the reporting of
21 certain misconduct by certain persons; and in connection
22 therewith would have as its purpose or effect the requirement
23 of a new or increased expenditure of local funds within the
24 meaning of Amendment 621 of the Constitution of Alabama of
25 1901, now appearing as Section 111.05 of the Official
26 Recompilation of the Constitution of Alabama of 1901, as
27 amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 13A-6-151, 13A-6-152, and
3 13A-6-157, Code of Alabama 1975, are amended to read as
4 follows:

5 "§13A-6-151.

6 "As used in this article, the following terms shall
7 have the following, or any combination of the following,
8 meanings ascribed to them by this section:

9 "(1) COERCION. Any of the following:

10 "a. Causing or threatening to cause physical injury
11 or mental suffering to any person, physically restraining or
12 confining any person, or threatening to physically restrain or
13 confine any person or otherwise causing the person performing
14 or providing labor or services to believe that the person or
15 another person will suffer physical injury or mental
16 suffering.

17 "b. Implementing any scheme, plan, or pattern
18 intended to cause a person to believe that failure to perform
19 an act would result in physical injury, mental suffering, or
20 physical restraint of any person.

21 "c. Destroying, concealing, removing, confiscating,
22 or withholding from the person or another person, or
23 threatening to destroy, conceal, remove, confiscate, or
24 withhold from the person or another person, the person's or
25 any person's actual or purported government records,
26 immigration documents, identifying information, or personal or
27 real property.

1 "d. Exposing or threatening to expose any fact or
2 information that if revealed would tend to subject a person to
3 criminal prosecution, criminal or immigration proceedings,
4 hatred, contempt, or ridicule.

5 "e. Threatening to report the person or another
6 person to immigration officials or to other law enforcement
7 officials or otherwise blackmailing or extorting the person or
8 another person.

9 "f. Controlling a person's access to a controlled
10 substance, as the term is defined in Section 20-2-2.

11 "g. Rape or sodomy or threatened rape or sodomy of
12 any person, as defined in Title 13A.

13 "(2) DECEPTION. Any of the following:

14 "a. Creating or confirming an impression of any
15 existing fact or past event which is false and which the
16 accused knows or believes to be false.

17 "b. Exerting financial control over the person or
18 another person by placing the person or another person under
19 the actor's control as a security or payment of a debt, if the
20 value of the services as reasonably assessed is not applied
21 toward the liquidation of the debt or the length and nature of
22 those services are not respectively limited and defined or the
23 principal amount of the debt does not reasonably reflect the
24 value of the items or services for which debt was incurred or
25 by preventing a person from acquiring information pertinent to
26 the disposition of the debt, referenced in this paragraph.

1 "c. Promising benefits or the performance of
2 services which the accused does not intend to be delivered.
3 Evidence of failure to deliver benefits or perform services
4 standing alone shall not be sufficient to authorize a
5 conviction under this article.

6 "d. Using any scheme, plan, or pattern, whether
7 overt or subtle, intended to cause any person to believe that,
8 if the person did not perform such labor, services, acts, or
9 performances, the person or another person would suffer
10 physical injury or mental suffering.

11 "(3) LABOR SERVITUDE. Work or service of economic or
12 financial value which is performed or provided by another
13 person and is induced or obtained by coercion or deception.

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

20 "(5) MINOR. A person under the age of ~~18~~ 19.

21 "(6) PHYSICAL INJURY. Impairment of physical
22 condition or substantial pain.

23 "(7) SEXUAL CONDUCT. Any of the following acts:

24 "a. Sexual intercourse. This term shall have its
25 ordinary meaning and occurs upon a penetration, however
26 slight; emission is not required.

1 "b. Sexual contact. Any known touching for the
2 purpose of sexual arousal, gratification, or abuse of the
3 following:

4 "1. The sexual or other intimate parts of the victim
5 by the actor.

6 "2. The sexual or other intimate part of the actor
7 by the victim.

8 "3. The clothing covering the immediate area of the
9 sexual or other intimate parts of the victim or actor.

10 "c. Sexual explicit performances, meaning an act or
11 show intended to arouse, satisfy the sexual desires of, or
12 appeal to the prurient interests of patrons or viewers,
13 whether public or private, live, photographed, recorded,
14 videotaped, or projected over the Internet.

15 "d. Commercial sex acts, meaning any sex act on
16 account of which anything of value is given, promised to, or
17 received, directly or indirectly, by any person.

18 ~~"(7) (8) SEXUAL SERVITUDE. Any of the following:~~

19 ~~"a. Any sexual conduct as defined in subdivision (3)~~
20 ~~of Section 14-11-30, for which anything of value is directly~~
21 ~~or indirectly given, promised to, or received by any person,~~
22 ~~which conduct is induced or obtained by coercion or deception~~
23 ~~from a person; provided, however, that if the sexual conduct~~
24 ~~is with a minor, no coercion or deception is required.~~

25 ~~"b. Sexual conduct includes:~~

26 ~~"1. Sexually explicit performances, meaning an act~~
27 ~~or show intended to arouse, satisfy the sexual desires of, or~~

1 ~~appeal to the prurient interests of patrons or viewers,~~
2 ~~whether public or private, live, photographed, recorded,~~
3 ~~videotaped, or projected over the Internet.~~

4 ~~"2. Commercial sex acts, meaning any sex act on~~
5 ~~account of which anything of value is given, promised to, or~~
6 ~~received, directly or indirectly, by any person.~~

7 ~~"3. Acts defined in subdivision (3) of Section~~
8 ~~14-11-30.~~

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

12 ~~"§13A-6-152.~~

13 ~~"(a) A person commits the crime of human trafficking~~
14 ~~in the first degree if:~~

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

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

22 ~~"(3) He or she knowingly gives monetary~~
23 ~~consideration or any other thing of value to engage in any~~
24 ~~sexual conduct with a minor or an individual he or she~~
25 ~~believes to be a minor.~~

26 ~~"(3) (b) For purposes of this section, it is not~~
27 ~~required that the defendant have knowledge of a minor victim's~~

1 age, nor is reasonable mistake of age a defense to liability
2 under this section.

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

15 ~~"(5)~~ (d) Any person who obstructs, or attempts to
16 obstruct, or in any way interferes with or prevents the
17 enforcement of this section shall be guilty of a Class C
18 felony.

19 ~~"(b)~~ (e) Human trafficking in the first degree is a
20 Class A felony."

21 "§13A-6-157.

22 "(a) An individual who is a victim of human
23 trafficking may bring a civil action in the appropriate state
24 court.

25 "(b) Venue for any action brought under this section
26 shall be in the county in which the offense was committed or
27 in any other county into or through which the person upon whom

1 it was committed may have been carried in the commission of
2 the offense. If venue is proper in more than one county, venue
3 shall be in either county.

4 "(c) The court may award actual damages,
5 compensatory damages, punitive damages, injunctive relief, and
6 any other appropriate relief. A prevailing plaintiff shall
7 also be awarded attorney's fees and costs. Treble damages
8 shall be awarded on proof of actual damages where defendant's
9 acts were willful and malicious.

10 "(d) The court shall award a prevailing plaintiff
11 attorney's fees and costs.

12 "(e) Upon commencement of any action brought under
13 this section, the clerk of the court shall mail a copy of the
14 complaint or other initial pleading to the office of the
15 Attorney General and, upon entry of any injunction, judgment,
16 or decree in the action, shall mail a copy of the injunction,
17 judgment, or decree to the office of the Attorney General.

18 "(f) This section does not preclude any other remedy
19 available to the victim under federal law or the laws of this
20 state."

21 Section 2. Section 13A-6-157.1 is added to the Code
22 of Alabama 1975, to read as follows:

23 §13A-6-157.1.

24 (a) In addition to any other remedy under this
25 article, if the Attorney General has reason to believe that
26 any person, corporation, or any other legal entity is engaging
27 in, has engaged in, or is about to engage in any act or

1 practice declared to be unlawful by this article, the Attorney
2 General may bring an action in the name of the state in the
3 appropriate state court against the person, corporation, or
4 entity to restrain by temporary restraining order, or
5 temporary or permanent injunction, the acts or practices.

6 (b) In addition to any other remedy under this
7 article, the Attorney General may bring a civil action on
8 behalf of the state in the appropriate state court to recover
9 actual damages for victims of acts or practices performed in
10 violation of this article.

11 (c) Venue for any action brought under this section
12 is in the county in which the offense was committed or in any
13 other county into or through which the person upon whom it was
14 committed may have been carried in the commission of the
15 offense. If venue is proper in more than one county, venue
16 shall be in either county.

17 Section 3. Section 13A-6-158, Code of Alabama 1975,
18 is amended to read as follows:

19 "§13A-6-158.

20 "(a) (1) ~~An~~ Except as provided in subsection (c), an
21 action for an offense defined by this article where the victim
22 is not a minor shall be brought within five years from the
23 date the victim was removed or escaped from the human
24 trafficking situation.

25 "(2) Any statute of limitations that would otherwise
26 preclude prosecution for an offense involving the trafficking
27 of a minor, or the physical or sexual abuse of a minor, shall

1 be tolled until such time as the victim has reached the age of
2 ~~18~~ 19 years.

3 "(3) The running of the statute of limitations shall
4 be suspended where a person entitled to bring a claim of an
5 offense defined by this article could not have reasonably
6 discovered the crime due to circumstances resulting from the
7 human trafficking situation, such as psychological trauma,
8 cultural and linguistic isolation, and the inability to access
9 services.

10 "(b) Any statute of limitation period imposed for
11 the filing of a civil action under this article will not begin
12 to run until the plaintiff discovers both that the sex trade
13 act occurred and that the defendant caused, was responsible
14 for, or profited from the sex trade act.

15 "(1) If the plaintiff is a minor, then the
16 limitation period will not commence running until he or she
17 has reached the age of majority.

18 "(2) If the plaintiff is under a disability at the
19 time the cause of action accrues, so that it is impossible or
20 impractical for him or her to bring an action, then the time
21 of the disability is not part of the time limited for the
22 commencement of the action. Disability includes, but is not
23 limited to, insanity, imprisonment, or other incapacity or
24 incompetence.

25 "(3) If the plaintiff's injury is caused by two or
26 more acts that are part of a continuing series of sex trade
27 acts by the same defendant, then the limitation period will

1 not commence running until the last sex trade act in the
2 continuing series occurs.

3 "(4) If the plaintiff is subject to threats,
4 intimidation, manipulation, or fraud perpetrated by the
5 defendant or by any person acting in the interest of the
6 defendant, then the time when these acts occur will not be
7 part of the time limited for the commencement of this action.

8 "(c) There shall be no limitation period for civil
9 actions brought under this article by the Attorney General."

10 Section 4. Sections 13A-6-161 and 13A-6-162 are
11 added to the Code of Alabama 1975, to read as follows:

12 §13A-6-161.

13 Before the Attorney General commences any action
14 under this article, the Attorney General may issue subpoenas
15 to any person to appear and produce relevant papers,
16 documents, and physical evidence, and administer an oath or
17 affirmation to any person, in aid of any investigation or
18 inquiry into possible violations of this article. The
19 subpoenas shall be served in accordance with the appropriate
20 Alabama Rules of Civil Procedure. Upon failure of a person
21 without lawful excuse to obey such subpoena, the Attorney
22 General may apply to a court of competent jurisdiction for an
23 order compelling compliance. After an action is commenced,
24 discovery may proceed in accordance with the Alabama Rules of
25 Civil Procedure.

26 §13A-6-162.

1 (a) Any person, corporation, or other legal entity
2 who engages in any act or practice that violates this article
3 is liable for a civil penalty of up to fifty thousand dollars
4 (\$50,000) for each violation.

5 (b) Any person, corporation, or other legal entity
6 who violates the terms of an injunction or order issued under
7 this article shall forfeit and pay a civil penalty of not more
8 than seventy-five thousand dollars (\$75,000) per violation and
9 shall be adjudged in contempt. For the purpose of this
10 section, any court issuing an injunction or order under this
11 article shall retain jurisdiction, and in such cases the
12 Attorney General may petition for recovery of civil penalties.

13 (c) Upon a second or continuing violation of an
14 injunction after imposition of the sanctions in subsection
15 (b), and upon petition by the Attorney General, the circuit
16 court of general jurisdiction of a county may order the
17 dissolution or suspension or forfeiture of the franchise of
18 any corporation, partnership, or sole proprietorship that
19 willfully violates the terms of any injunction issued pursuant
20 to this article.

21 (d) In any successful action brought by the Attorney
22 General under this section, the court shall award the office
23 of the Attorney General reasonable attorney's fees and costs.

24 (e) All penalties recovered in actions brought under
25 this section shall be deposited into the State Treasury to the
26 credit of the Attorney General's Special Revenue Account for
27 the purpose of implementing and enforcing this article.

1 Amounts deposited into the Special Revenue Account shall be
2 budgeted and allotted in accordance with Sections 41-4-80
3 through 41-4-96 and Sections 41-19-1 through 41-19-12, Code of
4 Alabama 1975.

5 Section 5. Section 13A-12-121.1 is added to the Code
6 of Alabama 1975, to read as follows:

7 §13A-12-121.1.

8 (a) No person shall commit an act of prostitution,
9 as defined in Section 13A-12-120, with a minor.

10 (b) No person shall solicit, compel, or coerce any
11 minor to have sexual intercourse or participate in any natural
12 or unnatural sexual act, deviate sexual intercourse, or sexual
13 contact for monetary consideration or other thing of
14 marketable value.

15 (c) No person shall agree to engage in sexual
16 intercourse, deviate sexual intercourse, or sexual contact
17 with a minor or participate in the act for monetary
18 consideration or other thing of marketable value and give or
19 accept monetary consideration or other thing of value in
20 furtherance of the agreement.

21 (d) No person shall knowingly do any of the
22 following:

23 (1) Cause or aid a minor to commit or engage in
24 prostitution.

25 (2) Procure or solicit a minor for prostitution.

26 (3) Provide premises for the prostitution of a
27 minor.

1 (4) Receive or accept money or other thing of value
2 pursuant to a prior agreement with a minor where the minor
3 participates or is to participate in the proceeds of any
4 prostitution activity.

5 (5) Operate or assist in the operation of a house of
6 prostitution or a prostitution enterprise where minors
7 participate in prostitution.

8 (6) Sell or offer to sell travel services that
9 include or facilitate travel for the purpose of engaging in
10 sexual intercourse, sexual acts, deviate sexual intercourse,
11 or any other sexual contact with a minor.

12 Section 6. Section 13A-12-122, Code of Alabama 1975,
13 is amended to read as follows:

14 "§13A-12-122.

15 "(a) Each violation of ~~this division~~ Section
16 13A-12-121 is a Class A misdemeanor.

17 "(b) A violation of Section 13A-12-121.1 is a Class
18 B felony."

19 Section 7. Sections 13A-12-124 and 13A-12-125 are
20 added to the Code of Alabama 1975, to read as follows:

21 §13A-12-124.

22 (a) As used in this section, the term minor victim
23 means a person who committed, or was solicited to commit, an
24 act of prostitution while the person was a minor.

25 (b) Evidence of any of the following facts or
26 conditions does not constitute a defense in a prosecution

1 under Section 13A-12-121.1, Code of Alabama 1975, nor shall
2 the evidence preclude a finding of a violation:

3 (1) A minor victim's sexual history or history of
4 commercial sexual activity.

5 (2) A minor victim's connection by blood or marriage
6 to a defendant in the case or to anyone involved in the minor
7 victim's prostitution.

8 (3) Consent of or permission by a minor victim or
9 anyone else on the minor victim's behalf to any commercial sex
10 act or sexually explicit performance.

11 (4) Age of consent to engage in sexual activity.

12 (5) Mistake as to the minor victim's age, even if
13 the mistake is reasonable.

14 §13A-12-125.

15 In addition to all other fines and penalties
16 prescribed by law, a person convicted of violating Section
17 13A-6-152, Section 13A-6-153, Section 13A-12-111, Section
18 13A-12-112, Section 13A-12-121, or Section 13A-12-121.1 shall
19 pay a fine of five hundred dollars (\$500) which shall be used
20 to compensate victims of prostitution and human trafficking.
21 The fine shall be deposited into the State Treasury to the
22 credit of the Alabama Crime Victims Compensation Fund under
23 Section 15-23-16. Amounts deposited into the Alabama Crime
24 Victims Compensation Fund shall be budgeted and allotted in
25 accordance with Sections 41-4-80 through 41-4-96 and Sections
26 41-19-1 through 41-19-12.

1 Section 8. Sections 15-27-1 and 15-27-2, Code of
2 Alabama 1975, are amended to read as follows:

3 "§15-27-1.

4 "(a) A person who has been charged with a
5 misdemeanor criminal offense, a violation, a traffic
6 violation, or a municipal ordinance violation may file a
7 petition in the criminal division of the circuit court in the
8 county in which the charges were filed, to expunge records
9 relating to the charge in any of the following circumstances:

10 "(1) When the charge is dismissed with prejudice.

11 "(2) When the charge has been no billed by a grand
12 jury.

13 "(3) When the person has been found not guilty of
14 the charge.

15 "(4) When the charge was dismissed without prejudice
16 more than two years ago, has not been refiled, and the person
17 has not been convicted of any other felony or misdemeanor
18 crime, any violation, or any traffic violation, excluding
19 minor traffic violations, during the previous two years.

20 "(5) When the person proves by a preponderance of
21 the evidence that the person is a victim of human trafficking,
22 that the person committed the misdemeanor criminal offense,
23 violation, traffic violation, or municipal ordinance violation
24 during the period the person was being trafficked, and that
25 the person would not have committed the offense or violation
26 but for being trafficked. Evidence that a person is a victim
27 of human trafficking may include, but is not limited to,

1 evidence that the person's trafficker was convicted of
2 trafficking the person under Section 13A-6-152 or Section
3 13A-6-153.

4 "(b) The circuit court shall have exclusive
5 jurisdiction of a petition filed under subsection (a).

6 "§15-27-2.

7 "(a) A person who has been charged with a felony
8 offense, except a violent offense as defined in Section
9 12-25-32, may file a petition in the criminal division of the
10 circuit court in the county in which the charges were filed,
11 to expunge records relating to the charge in any of the
12 following circumstances:

13 "(1) When the charge is dismissed with prejudice.

14 "(2) When the charge has been no billed by a grand
15 jury.

16 "(3)a. The charge was dismissed after successful
17 completion of a drug court program, mental health court
18 program, diversion program, veteran's court, or any
19 court-approved deferred prosecution program after one year
20 from successful completion of the program.

21 "b. Expungement may be a court-ordered condition of
22 a program listed in paragraph a.

23 "(4) The charge was dismissed without prejudice more
24 than five years ago, has not been refiled, and the person has
25 not been convicted of any other felony or misdemeanor crime,
26 any violation, or any traffic violation, excluding minor
27 traffic violations, during the previous five years.

1 "(5) Ninety days have passed from the date of
2 dismissal with prejudice, no-bill, acquittal, or nolle
3 prosequi and the charge has not been refiled.

4 "(6) When the person proves by a preponderance of
5 the evidence that the person is a victim of human trafficking,
6 that the person committed the felony offense during the period
7 the person was being trafficked, and that the person would not
8 have committed the felony offense but for being trafficked.
9 Evidence that a person is a victim of human trafficking may
10 include, but is not limited to, evidence that the person's
11 trafficker was convicted of trafficking the person under
12 Section 13A-6-152 or Section 13A-6-153.

13 "(b) Subsection (a) notwithstanding, convictions for
14 the following offenses, which are defined as a violent offense
15 under subdivision (15) of Section 13A-25-32, may be expunged
16 upon a showing that the person committed the felony offense
17 during the period the person was trafficked, and that the
18 person would not have committed the felony offense but for
19 being trafficked:

20 "(1) Promoting prostitution in the first degree
21 pursuant to Section 13A-12-111.

22 "(2) Domestic violence in the third degree pursuant
23 to subsection (d) of Section 13A-6-132.

24 "(3) Production of obscene matter involving a person
25 under the age of 17 years pursuant to Section 13A-12-197.

26 "~~(b) (1)~~ (c) (1) A person who has been charged with
27 any felony offense, including a violent offense as defined in

1 Section 12-25-32, may file a petition in the criminal division
2 of the circuit court in the county in which the charges were
3 filed to expunge records relating to the charge if the person
4 has been found not guilty of the charge.

5 "(2) Records related to violent offenses as defined
6 in Section 12-25-32 may be disclosed to law enforcement agency
7 for criminal investigation purposes as provided in Section
8 15-27-7.

9 "~~(c)~~ (d) The circuit court shall have exclusive
10 jurisdiction of a petition filed under subsection (a) or
11 subsection (b)."

12 Section 9. (a) Any violation of Article 8 of Chapter
13 6 of Title 13A, Code of Alabama 1975, or any violation of
14 Section 13A-12-111, 13A-12-112, 13A-12-113, 13A-12-121, or
15 13A-12-121.1, Code of Alabama 1975, may only be prosecuted in
16 circuit or district court.

17 (b) Notwithstanding any provision of law to the
18 contrary, this section supersedes any law or ordinance that
19 provides for the prosecution of the offenses included in
20 subsection (a) in municipal court.

21 Section 10. The Legislature finds and declares the
22 following:

23 (1) There are an estimated 21 million people in
24 forced or coerced human trafficking worldwide.

25 (2) According to the United States State Department,
26 600,000 to 800,000 people are trafficked across international

1 borders every year, of which 80 percent are female and half
2 are children.

3 (3) Between 14,500 and 17,500 people are trafficked
4 into the United States each year.

5 (4) In 2017, more than 32,000 cases of human
6 trafficking were reported through the National Human
7 Trafficking Hotline. Trafficking related to illicit massage
8 therapy establishments accounted for 2,949 cases, which was
9 second in prevalence only to trafficking in escort services.

10 (5) More than 9,000 massage therapy establishments
11 are currently operating in the United States. There is strong
12 evidence suggesting that thousands of women are being
13 trafficked in these establishments in the United States on any
14 given day.

15 (6) Further regulating massage therapy
16 establishments will help eliminate massage parlor trafficking
17 while ensuring the health and safety of customers and
18 employees of legitimate massage therapy establishments.

19 Section 11. Sections 34-43-12, 34-43-13, 34-43-14,
20 and 34-43-15, Code of Alabama 1975, are amended to read as
21 follows:

22 "§34-43-12.

23 "(a) Applications for licensure or renewal shall be
24 on forms provided by the board and shall be accompanied by the
25 proper fee. The application shall be legible, either printed
26 in black ink or typed. Applications sent by facsimile shall
27 not be accepted. A two-by-two photograph, taken no more than

1 six months earlier, showing a frontal view of the head and
2 shoulders of the applicant, shall be submitted with the
3 application. All documents shall be submitted in English.

4 "(b) Each applicant for licensure shall be subject
5 to a criminal history check. Refusal to consent to a criminal
6 history check constitutes grounds for the board to deny the
7 applicant's application for licensure.

8 ~~"(b)~~ (c) The board shall issue a license to each
9 person who qualifies to be a massage therapist and to each
10 qualified massage therapy establishment. To be qualified for a
11 license as a massage therapist the applicant shall
12 successfully pass the examination, pay the examination fee,
13 pass the criminal history check pursuant to rules adopted by
14 the board, pay the criminal history check fee, and pay the
15 license fee. A license grants all professional rights, honors,
16 and privileges relating to the practice of massage therapy.

17 ~~"(c)~~ (d) Each licensed therapist shall display his
18 or her license in the manner specified by the board. Each
19 establishment shall post its license in plain sight and the
20 license of each massage therapist who practices in the
21 establishment.

22 ~~"(d)~~ (e) A license is the property of the board and
23 shall be surrendered upon demand of the board.

24 "§34-43-13.

25 "(a) Each license shall be renewed biennially, on or
26 before the anniversary date, by forwarding to the board a
27 renewal application accompanied by the renewal fee. Each

1 applicant for renewal for licensure shall be subject to a
2 criminal history check. Any license not renewed biennially on
3 or before the anniversary date shall expire.

4 "(b) Each licensee, upon application for renewal of
5 a license, shall do both of the following:

6 (1) ~~submit~~ Submit evidence of satisfactory
7 completion of the continuing education requirements contained
8 in Section 34-43-21.

9 "(2) Consent to a criminal history check. Refusal to
10 consent to a criminal history check constitutes grounds for
11 the board to deny the licensee's application for renewal of
12 the license.

13 "(c) Licenses are valid for two years from the date
14 of issuance. An individual whose license has expired and who
15 has ceased to practice massage therapy for a period of not
16 longer than five years may have his or her license reinstated
17 upon payment of a renewal fee and a late fee and submission of
18 a renewal application and evidence satisfactory to the board
19 that the applicant has fulfilled continuing education
20 requirements, passed a criminal history check pursuant to
21 rules adopted by the board, paid the criminal history check
22 fee, and passed the examination.

23 "(d) Subsequent to an official complaint, the board
24 may request a criminal background check of the licensee
25 through the district attorney of the circuit in which the
26 licensee is located.

27 "§34-43-14.

1 "(a) By rule, the board shall initially assess and
2 collect the following fees not to exceed:

3 "(1) One hundred sixty dollars (\$160) for the
4 examination.

5 "(2) One hundred dollars (\$100) for the initial
6 massage therapist license which shall be issued for one year.
7 The initial licensing fee shall be assessed in the month when
8 the applicant is notified that the license has been approved.

9 "(3) One hundred dollars (\$100) for all biennial
10 license renewals postmarked or received at the office of the
11 board by the date in which the license expires.

12 "(4) Twenty-five dollars (\$25) for the initial
13 application for licensure or the resubmission of the initial
14 application.

15 "(5) One hundred dollars (\$100) for the initial
16 establishment license.

17 "(6) Fifty dollars (\$50) for the biennial renewal of
18 the establishment license.

19 "(7) Fifty dollars (\$50) for the initial
20 registration as a massage therapy school in this state.

21 "(8) Ten dollars (\$10) to renew the registration as
22 a massage therapy school.

23 "(9) Ten dollars (\$10) to register as a massage
24 therapy instructor in this state. This is a one-time fee and
25 does not have to be renewed.

26 "(10) Seventy-five dollars (\$75) to reactivate an
27 inactive license.

1 "(11) Twenty-five dollars (\$25) shall be added to
2 all license fees not post-marked or received by the board
3 before the expiration date of the license.

4 "(12) Fifteen dollars (\$15) to verify a license.

5 "(13) Ten dollars (\$10) for a duplicate license
6 certificate or a name change on a license certificate. The
7 board may issue a duplicate certificate only after receiving a
8 sworn letter from the massage therapist that the original
9 certificate was lost, stolen, or destroyed. The records of the
10 board shall reflect that a duplicate certificate was issued.

11 "(14) A fee, set by the board, for the criminal
12 history check.

13 "(b) Necessary administrative fees may be charged by
14 the board, including, but not limited to, reasonable costs for
15 copying, labels, and lists. Examination and license fees may
16 be adjusted as the board shall deem appropriate.

17 "(c) There is hereby established a separate special
18 revenue trust fund in the State Treasury to be known as the
19 Alabama Board of Massage Therapy Fund. All receipts collected
20 by the board under the provisions of this chapter are to be
21 deposited in this fund and used only to carry out the
22 provisions of this chapter. Such receipts shall be disbursed
23 only by warrant of the state Comptroller, upon itemized
24 vouchers approved by the chair of the board; provided that no
25 funds shall be withdrawn except as budgeted and allotted
26 according to the provisions of Sections 41-4-80 to 41-4-96,
27 inclusive, 41-19-1, and 41-19-12, as amended, and only in

1 amounts as stipulated in the general appropriations bill or
2 other appropriations bills."

3 "§34-43-15.

4 "(a) Any person may file with the board a written
5 and signed complaint regarding an allegation of impropriety by
6 a licensee, establishment, or person. Complaints shall be made
7 in the manner prescribed by the board. Complaints received by
8 the board shall be referred to a standing investigative
9 committee consisting of a board member, the Executive
10 Director, the board attorney, and the board investigator. If
11 no probable cause is found, the investigative committee may
12 dismiss the charges and prepare a statement, in writing, of
13 the reasons for the decision.

14 ~~"(a) The~~ (b) If probable cause is found, the board
15 shall initiate an administrative proceeding. Upon a finding
16 that the licensee has committed any of the following instances
17 of misconduct, the board may suspend, revoke, or refuse to
18 issue or renew a license or impose a civil penalty after
19 notice and opportunity for a hearing pursuant to the
20 Administrative Procedure Act, upon proof of any of the
21 following:

22 "(1) The license was obtained by means of fraud,
23 misrepresentation, or concealment of material facts, including
24 making a false statement on an application or any other
25 document required by the board for licensure.

1 "(2) The licensee sold or bartered or offered to
2 sell or barter a license for a massage therapist or a massage
3 therapy establishment.

4 "(3) The licensee has engaged in unprofessional
5 conduct that has endangered or is likely to endanger the
6 health, safety, and welfare of the public, as defined by the
7 rules of the board. As used in this subdivision,
8 unprofessional conduct includes, but is not limited to,
9 allowing any individual to remain in a massage therapy
10 establishment overnight.

11 "(4) The licensee has been convicted of a felony or
12 of any crime arising out of or connected with the practice of
13 massage therapy.

14 "(5) The licensee has violated or aided and abetted
15 in the violation of this chapter.

16 "(6) The licensee is adjudicated as mentally
17 incompetent by a court of law.

18 "(7) The licensee uses controlled substances or
19 habitually and excessively uses alcohol.

20 "(8) The licensee engaged in false, deceptive, or
21 misleading advertising.

22 "(9) The licensee engaged in or attempted to or
23 offered to engage a client in sexual activity, including but
24 not limited to genital contact, within the client-massage
25 therapist relationship.

1 "(10) The licensee has knowingly allowed the massage
2 therapy establishment to be used as an overnight sleeping
3 accommodation.

4 "~~(9)~~ (11) The licensee had a license revoked,
5 suspended, or denied in any other territory or jurisdiction of
6 the United States for any act described in this section.

7 "(c) (1) A person governed by this chapter who has a
8 reasonable belief that another massage therapist has engaged
9 in or attempted to or offered to engage a client in sexual
10 activity, as provided in subdivision (9) of subsection (b),
11 shall inform the board in writing within 30 calendar days from
12 the date the person discovers this activity. Upon finding that
13 a person has violated this subsection, the board may do any of
14 the following:

15 "a. Impose an administrative fine of not more than
16 ten thousand dollars (\$10,000).

17 "b. Suspend or revoke the person's license to
18 practice massage therapy.

19 "(2) Upon a finding that a person has violated this
20 subsection three or more times, the board shall impose a
21 mandatory license suspension for a period of no less than
22 three years and a fine of ten thousand dollars (\$10,000).

23 "~~(b)~~ (d) Any person who has been convicted of, or
24 entered a plea of nolo contendere to, a crime or offense
25 involving prostitution or other sexual offenses is ineligible
26 to hold a license as a massage therapist for a period of at
27 least three years after the entry of the conviction or plea.

1 The board retains the right to revoke a license indefinitely
2 if the licensee is proven guilty of a crime or of sexual
3 misconduct. Reinstatement of licensure is contingent upon
4 proof of weekly counseling by a licensed professional
5 counselor.

6 ~~"(c)~~ (e) Any person who has been convicted of, or
7 entered a plea of nolo contendere to, an offense involving
8 prostitution or any other type of sexual offense may not
9 receive a license for a massage therapy establishment for a
10 period of three years after the date of conviction or entry of
11 the plea. The board shall revoke the establishment license of
12 any establishment which the board determines is a sexually
13 oriented business. The board may revoke an establishment
14 license if a person is convicted of, or enters a plea of nolo
15 contendere to, any crime involving prostitution or any other
16 sexual offense against a client which occurred on the premises
17 of the establishment.

18 ~~"(d)(1)~~ (f)(1) Upon finding a person, governed by
19 this chapter, performing massage therapy without having
20 obtained a license, the board may do any of the following:

21 "a. Impose an administrative fine of not more than
22 ten thousand dollars (\$10,000).

23 "b. Issue a cease and desist order.

24 "c. Petition the circuit court of the county where
25 the act occurred to enforce the cease and desist order and
26 collect the assessed fine.

1 "(2) Any person aggrieved by any adverse action of
2 the board must appeal the action to the Circuit Court of
3 Montgomery County in accordance with the Alabama
4 Administrative Procedure Act.

5 "(g) The board shall present any incident of
6 misconduct to the local district attorney for review and
7 appropriate action.

8 "(h) The board may adopt rules to implement and
9 administer this section."

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

18 Section 13. This act shall become effective on the
19 first day of the third month following its passage and
20 approval by the Governor, or its otherwise becoming law.