- 1 HB305
- 2 192284-4
- 3 By Representatives Williams (JD), Coleman, Hall and Boyd
- 4 RFD: Judiciary
- 5 First Read: 25-JAN-18

1	ENGROSSED
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4 A BILL

5 TO BE ENTITLED

6 AN ACT

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

human trafficking; to add Sections 13A-12-124 and 13A-12-125 1 2 to the Code of Alabama 1975, to prohibit a defendant accused of engaging in an act of prostitution with a minor from 3 asserting a mistake of age defense and to provide an 4 5 additional fine; to amend Sections 15-27-1 and 15-27-2, Code of Alabama 1975, to provide further for the expungement of 6 7 certain crimes committed by victims of human trafficking under certain conditions; to provide that human trafficking offenses 8 and certain prostitution offenses may only be prosecuted in 9 10 circuit or district court; and in connection therewith would have as its purpose or effect the requirement of a new or 11 increased expenditure of local funds within the meaning of 12 13 Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of 14 15 the Constitution of Alabama of 1901, as amended. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: 16 Section 1. Sections 13A-6-151, 13A-6-152, and 17 18 13A-6-157, Code of Alabama 1975, are amended to read as follows: 19

20 "\$13A-6-151.

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

"(1) COERCION. Any of the following:

"a. Causing or threatening to cause physical injury or mental suffering to any person, physically restraining or confining any person, or threatening to physically restrain or

confine any person or otherwise causing the person performing or providing labor or services to believe that the person or another person will suffer physical injury or mental suffering.

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- "b. Implementing any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in physical injury, mental suffering, or physical restraint of any person.
 - "c. Destroying, concealing, removing, confiscating, or withholding from the person or another person, or threatening to destroy, conceal, remove, confiscate, or withhold from the person or another person, the person's or any person's actual or purported government records, immigration documents, identifying information, or personal or real property.
 - "d. Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal prosecution, criminal or immigration proceedings, hatred, contempt, or ridicule.
 - "e. Threatening to report the person or another person to immigration officials or to other law enforcement officials or otherwise blackmailing or extorting the person or another person.
- "f. Controlling a person's access to a controlled substance, as the term is defined in Section 20-2-2.
- "g. Rape or sodomy or threatened rape or sodomy of any person, as defined in Title 13A.

"(2) DECEPTION. Any of the following:

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

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

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

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

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

Τ	"(4) MENTAL SUFFERING. A nigh degree of mental pain
2	or emotional disturbances, such as distress, anxiety, public
3	humiliation, or psychosomatic physical symptoms. It is more
4	than mere disappointment, anger, resentment, wounded pride, or
5	embarrassment and must be a direct result of the crime of
6	human trafficking.
7	"(5) MINOR. A person under the age of $\frac{18}{19}$.
8	"(6) PHYSICAL INJURY. Impairment of physical
9	condition or substantial pain.
10	"(7) SEXUAL CONDUCT. Any of the following acts:
11	"a. Sexual intercourse. This term shall have its
12	ordinary meaning and occurs upon a penetration, however
13	slight; emission is not required.
14	"b. Sexual contact. Any known touching for the
15	purpose of sexual arousal, gratification, or abuse of the
16	<pre>following:</pre>
17	"1. The sexual or other intimate parts of the victim
18	by the actor.
19	"2. The sexual or other intimate part of the actor
20	by the victim.
21	"3. The clothing covering the immediate area of the
22	sexual or other intimate parts of the victim or actor.
23	"c. Sexual explicit performances, meaning an act or
24	show intended to arouse, satisfy the sexual desires of, or
25	appeal to the prurient interests of patrons or viewers,
26	whether public or private, live, photographed, recorded,
27	videotaped, or projected over the Internet.

1	"d. Commercial sex acts, meaning any sex act on
2	account of which anything of value is given, promised to, or
3	received, directly or indirectly, by any person.
4	" $\frac{(7)}{(8)}$ SEXUAL SERVITUDE. Any of the following:
5	"a. Any sexual conduct as defined in subdivision (3)
6	of Section 14-11-30, for which anything of value is directly
7	or indirectly given, promised to, or received by any person,
8	which conduct is induced or obtained by coercion or deception
9	from a person; provided, however, that if the sexual conduct
10	is with a minor, no coercion or deception is required.
11	"b. Sexual conduct includes:
12	"1. Sexually explicit performances, meaning an act
13	or show intended to arouse, satisfy the sexual desires of, or
14	appeal to the prurient interests of patrons or viewers,
15	whether public or private, live, photographed, recorded,
16	videotaped, or projected over the Internet.
17	"2. Commercial sex acts, meaning any sex act on
18	account of which anything of value is given, promised to, or
19	received, directly or indirectly, by any person.
20	"3. Acts defined in subdivision (3) of Section
21	14-11-30.
22	" $\frac{(8)}{(9)}$ TRAFFICKING VICTIM. Any person, including
23	minors, subjected to labor servitude, sexual servitude, or
24	involuntary servitude.
25	"§13A-6-152.
26	"(a) A person commits the crime of human trafficking
27	in the first degree if:

"(1) He or she knowingly subjects another person to
labor servitude or sexual servitude through use of coercion or

deception.

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

 consideration or any other thing of value to engage in any

 sexual conduct with a minor or an individual he or she

 believes to be a minor.

"(3) (b) For purposes of this section, it is not required that the defendant have knowledge of a minor victim's age, nor is reasonable mistake of age a defense to liability under this section.

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

1	" (5) <u>(d)</u> Any person who obstructs, or attempts to
2	obstruct, or in any way interferes with or prevents the
3	enforcement of this section shall be guilty of a Class C
4	felony.
5	" (b) <u>(e)</u> Human trafficking in the first degree is a
6	Class A felony."
7	"\$13A-6-157.
8	" <u>(a)</u> An individual who is a victim of human
9	trafficking may bring a civil action in the appropriate state
10	court.
11	"(b) Venue for any action brought under this section
12	shall be in the county in which the offense was committed or
13	in any other county into or through which the person upon whom
14	it was committed may have been carried in the commission of
15	the offense. If venue is proper in more than one county, venue
16	shall be in either county.
17	"(c) The court may award actual damages,
18	compensatory damages, punitive damages, injunctive relief, and
19	any other appropriate relief. A prevailing plaintiff shall
20	also be awarded attorney's fees and costs. Treble damages
21	shall be awarded on proof of actual damages where defendant's
22	acts were willful and malicious.
23	"(d) The court shall award a prevailing plaintiff
24	attorney's fees and costs.
25	"(e) Upon commencement of any action brought under
26	this section, the clerk of the court shall mail a copy of the
27	complaint or other initial pleading to the office of the

Attorney General and, upon entry of any injunction, judgment, or decree in the action, shall mail a copy of the injunction,

judgment, or decree to the office of the Attorney General.

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

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

\$13A-6-157.1.

- (a) In addition to any other remedy under this article, if the Attorney General has reason to believe that any person, corporation, or any other legal entity is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this article, the Attorney General may bring an action in the name of the state in the appropriate state court against the person, corporation, or entity to restrain by temporary restraining order, or temporary or permanent injunction, the acts or practices.
- (b) In addition to any other remedy under this article, the Attorney General may bring a civil action on behalf of the state in the appropriate state court to recover actual damages for victims of acts or practices performed in violation of this article.
- (c) Venue for any action brought under this section is in the county in which the offense was committed or in any other county into or through which the person upon whom it was committed may have been carried in the commission of the

offense. If venue is proper in more than one county, venue shall be in either county.

3 Section 3. Section 13A-6-158, Code of Alabama 1975, 4 is amended to read as follows:

"\$13A-6-158.

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- "(a) (1) An Except as provided in subsection (c), an action for an offense defined by this article where the victim is not a minor shall be brought within five years from the date the victim was removed or escaped from the human trafficking situation.
- "(2) Any statute of limitations that would otherwise preclude prosecution for an offense involving the trafficking of a minor, or the physical or sexual abuse of a minor, shall be tolled until such time as the victim has reached the age of $\frac{18}{19}$ years.
- "(3) The running of the statute of limitations shall be suspended where a person entitled to bring a claim of an offense defined by this article could not have reasonably discovered the crime due to circumstances resulting from the human trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.
- "(b) Any statute of limitation period imposed for the filing of a civil action under this article will not begin to run until the plaintiff discovers both that the sex trade act occurred and that the defendant caused, was responsible for, or profited from the sex trade act.

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

- "(2) If the plaintiff is under a disability at the time the cause of action accrues, so that it is impossible or impractical for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.
- "(3) If the plaintiff's injury is caused by two or more acts that are part of a continuing series of sex trade acts by the same defendant, then the limitation period will not commence running until the last sex trade act in the continuing series occurs.
- "(4) If the plaintiff is subject to threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant, then the time when these acts occur will not be part of the time limited for the commencement of this action.
- "(c) There shall be no limitation period for civil actions brought under this article by the Attorney General."

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

Before the Attorney General commences any action under this article, the Attorney General may issue subpoenas

to any person to appear and produce relevant papers,

documents, and physical evidence, and administer an oath or

affirmation to any person, in aid of any investigation or

inquiry into possible violations of this article. The

subpoenas shall be served in accordance with the appropriate

Alabama Rules of Civil Procedure. Upon failure of a person

without lawful excuse to obey such subpoena, the Attorney

General may apply to a court of competent jurisdiction for an

order compelling compliance. After an action is commenced,

discovery may proceed in accordance with the Alabama Rules of

Civil Procedure.

\$13A-6-162.

- (a) Any person, corporation, or other legal entity who engages in any act or practice that violates this article is liable for a civil penalty of up to fifty thousand dollars (\$50,000) for each violation.
- (b) Any person, corporation, or other legal entity who violates the terms of an injunction or order issued under this article shall forfeit and pay a civil penalty of not more than seventy-five thousand dollars (\$75,000) per violation and shall be adjudged in contempt. For the purpose of this section, any court issuing an injunction or order under this article shall retain jurisdiction, and in such cases the Attorney General may petition for recovery of civil penalties.
- (c) Upon a second or continuing violation of an injunction after imposition of the sanctions in subsection(b), and upon petition by the Attorney General, the circuit

- court of general jurisdiction of a county may order the
 dissolution or suspension or forfeiture of the franchise of
 any corporation, partnership, or sole proprietorship that
 willfully violates the terms of any injunction issued pursuant
 to this article.
 - (d) In any successful action brought by the Attorney General under this section, the court shall award the office of the Attorney General reasonable attorney's fees and costs.
 - (e) All penalties recovered in actions brought under this section shall be deposited into the State Treasury to the credit of the Attorney General's Special Revenue Account for the purpose of implementing and enforcing this article.

 Amounts deposited into the Special Revenue Account shall be budgeted and allotted in accordance with Sections 41-4-80 through 41-4-96 and Sections 41-19-1 through 41-19-12, Code of Alabama 1975.
 - Section 5. Section 13A-12-121.1 is added to the Code of Alabama 1975, to read as follows:
- 19 \$13A-12-121.1.

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- (a) No person shall commit an act of prostitution, as defined in Section 13A-12-120, with a minor.
- (b) No person shall solicit, compel, or coerce any minor to have sexual intercourse or participate in any natural or unnatural sexual act, deviate sexual intercourse, or sexual contact for monetary consideration or other thing of marketable value.

- 1 (c) No person shall agree to engage in sexual
 2 intercourse, deviate sexual intercourse, or sexual contact
 3 with a minor or participate in the act for monetary
 4 consideration or other thing of marketable value and give or
 5 accept monetary consideration or other thing of value in
 6 furtherance of the agreement.
- 7 (d) No person shall knowingly do any of the 8 following:
- 9 (1) Cause or aid a minor to commit or engage in prostitution.
 - (2) Procure or solicit a minor for prostitution.
 - (3) Provide premises for the prostitution of a minor.
 - (4) Receive or accept money or other thing of value pursuant to a prior agreement with a minor where the minor participates or is to participate in the proceeds of any prostitution activity.
 - (5) Operate or assist in the operation of a house of prostitution or a prostitution enterprise where minors participate in prostitution.
 - (6) Sell or offer to sell travel services that include or facilitate travel for the purpose of engaging in sexual intercourse, sexual acts, deviate sexual intercourse, or any other sexual contact with a minor.
- Section 6. Section 13A-12-122, Code of Alabama 1975, is amended to read as follows:
- 27 "\$13A-12-122.

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1	" <u>(a)</u> Each violation of this division <u>Section</u>
2	13A-12-121 is a Class A misdemeanor.
3	"(b) A violation of Section 13A-12-121.1 is a Class
4	B felony."
5	Section 7. Sections 13A-12-124 and 13A-12-125 are
6	added to the Code of Alabama 1975, to read as follows:
7	\$13A-12-124.
8	(a) As used in this section, the term minor victim
9	means a person who committed, or was solicited to commit, an
10	act of prostitution while the person was a minor.
11	(b) Evidence of any of the following facts or
12	conditions does not constitute a defense in a prosecution
13	under Section 13A-12-121.1, Code of Alabama 1975, nor shall
14	the evidence preclude a finding of a violation:
15	(1) A minor victim's sexual history or history of
16	commercial sexual activity.
17	(2) A minor victim's connection by blood or marriage
18	to a defendant in the case or to anyone involved in the minor
19	victim's prostitution.
20	(3) Consent of or permission by a minor victim or
21	anyone else on the minor victim's behalf to any commercial sex
22	act or sexually explicit performance.
23	(4) Age of consent to engage in sexual activity.
24	(5) Mistake as to the minor victim's age, even if
25	the mistake is reasonable.
26	§13A-12-125.

In addition to all other fines and penalties 1 2 prescribed by law, a person convicted of violating Section 13A-6-152, Section 13A-6-153, Section 13A-12-111, Section 3 13A-12-112, Section 13A-12-121, or Section 13A-12-121.1 shall 4 5 pay a fine of five hundred dollars (\$500) which shall be used 6 to compensate victims of prostitution and human trafficking. 7 The fine shall be deposited into the State Treasury to the 8 credit of the Alabama Crime Victims Compensation Fund under 9 Section 15-23-16. Amounts deposited into the Alabama Crime 10 Victims Compensation Fund shall be budgeted and allotted in accordance with Sections 41-4-80 through 41-4-96 and Sections 11 41-19-1 through 41-19-12. 12

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

"§15-27-1.

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- "(a) A person who has been charged with a misdemeanor criminal offense, a violation, a traffic violation, or a municipal ordinance violation may file a petition in the criminal division of the circuit court in the county in which the charges were filed, to expunge records relating to the charge in any of the following circumstances:
 - "(1) When the charge is dismissed with prejudice.
- "(2) When the charge has been no billed by a grand jury.
- 25 "(3) When the person has been found not guilty of 26 the charge.

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

- "(5) When the person proves by a preponderance of the evidence that the person is a victim of human trafficking, that the person committed the misdemeanor criminal offense, violation, traffic violation, or municipal ordinance violation during the period the person was being trafficked, and that the person would not have committed the offense or violation but for being trafficked. Evidence that a person is a victim of human trafficking may include, but is not limited to, evidence that the person's trafficker was convicted of trafficking the person under Section 13A-6-152 or Section 13A-6-153.
- "(b) The circuit court shall have exclusive jurisdiction of a petition filed under subsection (a). \$15-27-2.
- "(a) A person who has been charged with a felony offense, except a violent offense as defined in Section 12-25-32, may file a petition in the criminal division of the circuit court in the county in which the charges were filed, to expunge records relating to the charge in any of the following circumstances:
 - "(1) When the charge is dismissed with prejudice.

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

- "(3)a. The charge was dismissed after successful completion of a drug court program, mental health court program, diversion program, veteran's court, or any court-approved deferred prosecution program after one year from successful completion of the program.
- "b. Expungement may be a court-ordered condition ofa program listed in paragraph a.
 - "(4) The charge was dismissed without prejudice more than five years ago, has not been refiled, and the person has not been convicted of any other felony or misdemeanor crime, any violation, or any traffic violation, excluding minor traffic violations, during the previous five years.
 - "(5) Ninety days have passed from the date of dismissal with prejudice, no-bill, acquittal, or nolle prosequi and the charge has not been refiled.
 - "(6) When the person proves by a preponderance of the evidence that the person is a victim of human trafficking, that the person committed the felony offense during the period the person was being trafficked, and that the person would not have committed the felony offense but for being trafficked.

 Evidence that a person is a victim of human trafficking may include, but is not limited to, evidence that the person's trafficker was convicted of trafficking the person under Section 13A-6-152 or Section 13A-6-153.

1	"(b) Subsection (a) notwithstanding, convictions for
2	the following offenses, which are defined as a violent offense
3	under subdivision (15) of Section 13A-25-32, may be expunded
4	upon a showing that the person committed the felony offense
5	during the period the person was trafficked, and that the
6	person would not have committed the felony offense but for
7	<pre>being trafficked:</pre>
8	"(1) Promoting prostitution in the first degree
9	pursuant to Section 13A-12-111.
10	"(2) Domestic violence in the third degree pursuant
11	to subsection (d) of Section 13A-6-132.
12	"(3) Production of obscene matter involving a person
13	under the age of 17 years pursuant to Section 13A-12-197.
14	"(b)(1) A person who has been charged with any
15	felony offense, including a violent offense as defined in
16	Section 12-25-32, may file a petition in the criminal division
17	of the circuit court in the county in which the charges were
18	filed to expunge records relating to the charge if the person
19	has been found not guilty of the charge.
20	"(2) Records related to violent offenses as defined
21	in Section 12-25-32 may be disclosed to law enforcement agency
22	for criminal investigation purposes as provided in Section
23	15-27-7.
24	"(c) The circuit court shall have exclusive
25	jurisdiction of a petition filed under subsection (a) or
26	subsection (b)."

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

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

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

Section 11. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

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3	House of Representatives
4 5 6	Read for the first time and re- ferred to the House of Representa- tives committee on Judiciary 25-JAN-18
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8 9 10	Read for the second time and placed on the calendar with 1 substitute and 08-MAR-18
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12 13	Read for the third time and passed as amended 13-MAR-18
14	Yeas 101, Nays 0, Abstains 1
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16 17 18	Jeff Woodard Clerk