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4

As Engrossed: H2/6/13

A Bill

HOUSE BILL 1203

5 By: Representatives D. Meeks, *Leding, D. Altes, Carnine, Deffenbaugh, C. Douglas, D. Douglas, Fite,*
6 *Harris, Hobbs, House, S. Meeks, Scott*

For An Act To Be Entitled

9 AN ACT ESTABLISHING THE HUMAN TRAFFICKING ACT OF
10 2013; CONCERNING THE OFFENSE OF HUMAN TRAFFICKING;
11 AND FOR OTHER PURPOSES.
12
13

Subtitle

15 ESTABLISHING THE HUMAN TRAFFICKING ACT OF
16 2013; CONCERNING THE OFFENSE OF HUMAN
17 TRAFFICKING.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21
22 *SECTION 1. DO NOT CODIFY. Title.*

23 *This act shall be cited as the "Arkansas Human Trafficking Act of*
24 *2013".*

25
26 *SECTION 2. Arkansas Code § 5-11-108 is repealed.*

27 *~~5-11-108. Trafficking of persons.~~*

28 *~~(a) As used in this section:~~*

29 *~~(1) "Debt bondage" means the status or condition of a debtor~~*
30 *~~arising from a pledge by the debtor of his or her personal services or of the~~*
31 *~~personal services of a person under his or her control as a security for~~*
32 *~~debt, if:~~*

33 *~~(A) The value of the debtor's personal services or of the~~*
34 *~~personal services of a person under his or her control as reasonably assessed~~*
35 *~~is not applied toward the liquidation of the debt; or~~*

36 *~~(B) The length and nature of the debtor's personal~~*



~~services or of the personal services of a person under his or her control are not respectively limited and defined;~~

~~(2) "Involuntary servitude" means a condition of servitude induced by means of:~~

~~(A) Any scheme, plan, or pattern of behavior intended to cause a person to believe that if he or she does not enter into or continue the servitude, he or she or another person will suffer serious physical injury or physical restraint; or~~

~~(B) The abuse or threatened abuse of the legal process;~~

~~(3) "Peonage" means holding a person against his or her will to pay off a debt; and~~

~~(4) "Sexual conduct" means the same as defined in § 5-27-401.~~

~~(b) A person commits the offense of trafficking of persons if he or she:~~

~~(1) Recruits, harbors, transports, or obtains a person for labor or services through the use of force, fraud, or coercion for the purpose of subjecting the person to:~~

~~(A) Involuntary servitude;~~

~~(B) Peonage;~~

~~(C) Debt bondage;~~

~~(D) Slavery;~~

~~(E) Marriage;~~

~~(F) Adoption; or~~

~~(G) Sexual conduct; or~~

~~(2) Benefits financially or benefits by receiving anything of value from participation in a venture under subdivision (b)(1) of this section.~~

~~(c) Trafficking of persons is a Class A felony.~~

SECTION 3. Arkansas Code Title 5 is amended to add a new chapter to read as follows:

Chapter 18

The Human Trafficking Act of 2013

5-18-101. Title.

1 This chapter shall be known as and may be cited as the "Human
2 Trafficking Act of 2013".

3
4 5-18-102. Definitions.

5 As used in this chapter:

6 (1) "Commercial sexual activity" means a sexual act or sexually
7 explicit performance for which anything of value is given, promised, or
8 received, directly or indirectly, by a person;

9 (2) "Debt bondage" means the status or condition of a debtor
10 arising from a pledge by the debtor of his or her personal services or of the
11 personal services of a person under his or her control as a security for
12 debt, if:

13 (A) The value of the debtor's personal services or of the
14 personal services of a person under his or her control as reasonably assessed
15 is not applied toward the liquidation of the debt;

16 (B) The length and nature of the debtor's personal
17 services or of the personal services of a person under his or her control are
18 not respectively limited and defined; or

19 (C) The principal amount of the debt does not reasonably
20 reflect the value of the items or services for which the debt was incurred;

21 (3) "Extortion" means the obtaining of property, labor, a
22 service, credit, a commercial sexually activity, or a sexually explicit
23 performance from another person or of an official act of a public officer
24 through a wrongful use of force or fear or under color of official right;

25 (4) "Financial harm" means extortion of credit, criminal
26 violation of the usury laws, or employment contracts that violate the
27 statutes of frauds, § 4-59-101;

28 (5) "Involuntary servitude" means the inducement or compulsion
29 of a person to engage in labor, services, or commercial sexual activity by
30 means of:

31 (A) A scheme, plan, or pattern of behavior with a purpose
32 to cause a person to believe that if he or she does not engage in labor,
33 services, or commercial sexual activity, he or she or another person will
34 suffer serious physical injury or physical restraint;

35 (B) Abuse or threatened abuse of the legal process;

36 (C) The causing of or the threat to cause serious harm to

1 a person;

2 (D) Physically restraining or threatening to physically
3 restrain another person;

4 (E) The kidnapping of or threat to kidnap a person;

5 (F) The taking of another person's personal property or
6 real property;

7 (G) The knowing destruction, concealment, removal,
8 confiscation, or possession of an actual or purported passport, other
9 immigration document, or other actual or purported government identification
10 document of another person;

11 (H) Extortion or blackmail;

12 (I) Deception or fraud;

13 (J) Coercion, duress, or menace;

14 (K) Debt bondage;

15 (L) Peonage; or

16 (M) The facilitation or control of a victim's access to an
17 addictive controlled substance;

18 (6) "Labor" means work of economic or financial value;

19 (7) "Menace" means a possible danger or threat;

20 (8) "Minor" means a person less than eighteen (18) years of age;

21 (9) "Organization" means the same as defined in § 5-2-501;

22 (10) "Peonage" means holding a person against his or her will to
23 pay off a debt;

24 (11) "Serious harm" means any harm, whether physical or
25 nonphysical, including without limitation psychological, financial, or
26 reputational harm, that is sufficiently serious, under all the surrounding
27 circumstances, to compel a reasonable person of the same background and in
28 the same circumstances as the victim to perform or to continue performing
29 labor or service, a commercial sex act, or a sexually explicit performance in
30 order to avoid incurring that harm;

31 (12) "Service" means an act committed at the behest of, under
32 the supervision of, or for the benefit of another person;

33 (13)(A) "Sex act" means any touching of the sexual or other
34 intimate parts of another person for the purpose of gratifying the sexual
35 desire of a person.

36 (B) "Sex act" includes without limitation the touching of

1 the person as well as touching by the person, whether directly or through
2 clothing;

3 (14)(A) "Sexually explicit performance" means an act or show,
4 whether public or private, live, photographed, recorded, or videotaped with a
5 purpose to:

6 (i) Either:

7 (a) Appeal to the prurient interest; or

8 (b) Depict, in a patently offensive way, a sex
9 act; and

10 (ii) Do so in a way that lacks literary, artistic,
11 political, or scientific value.

12 (B) "Sexually explicit performance" includes without
13 limitation any performance that depicts a sex act by a minor or that would
14 create criminal liability under § 5-27-303 or § 5-27-304; and

15 (15) "Victim of human trafficking" means a person who has been
16 subjected to trafficking of persons, § 5-18-103.

17
18 5-18-103. Trafficking of persons.

19 (a) A person commits the offense of trafficking of persons if he or
20 she knowingly:

21 (1) Recruits, harbors, transports, obtains, entices, solicits,
22 isolates, provides, or maintains a person knowing that the person will be
23 subjected to involuntary servitude;

24 (2) Benefits financially or benefits by receiving anything of
25 value from participation in a venture under subdivision (a)(1) of this
26 section;

27 (3) Subjects a person to involuntary servitude; or

28 (4) Recruits, entices, solicits, isolates, harbors, transports,
29 provides, maintains, or obtains a minor for commercial sexual activity.

30 (b) It is not a defense to prosecution under subdivision (a)(4) of
31 this section that the actor:

32 (1) Did not have knowledge of a victim's age; or

33 (2) Mistakenly believed a victim was not a minor.

34 (c)(1) Trafficking of persons is a Class A felony.

35 (2) Trafficking of persons is a Class Y felony if a victim was a
36 minor at the time of the offense.

1
2 5-18-104. Patronizing a victim of human trafficking.

3 (a) A person commits the offense of patronizing a victim of human
4 trafficking if he or she knowingly engages in commercial sexual activity with
5 another person knowing that the other person is a victim of human
6 trafficking.

7 (b)(1) Patronizing a victim of human trafficking is a Class B felony.

8 (2) Patronizing a victim of human trafficking is a Class A
9 felony if the victim was a minor at the time of the offense.

10
11 5-18-105. Enhanced liability of an organization.

12 In addition to any other statutorily authorized sentence or fine, an
13 organization convicted of an offense under this chapter is subject to any
14 combination of the following:

15 (1) A suspension or revocation of a license, permit, or prior
16 approval granted to the organization by a state or local government agency;

17 (2) A court order to dissolve or reorganize; and

18 (3) Other relief as is equitable.

19
20 SECTION 4. Arkansas Code § 5-70-102 is amended to read as follows:

21 5-70-102. Prostitution.

22 (a) A person commits prostitution if in return for or in expectation
23 of a fee he or she engages in or agrees or offers to engage in sexual
24 activity with any other person.

25 (b) Prostitution is a:

26 (1) Class B misdemeanor for the first offense; and

27 (2) Class A misdemeanor for ~~second and subsequent offenses a~~
28 second or subsequent offense under this section.

29 (c) It is an affirmative defense to prosecution that the person
30 engaged in an act of prostitution as a result of being a victim of
31 trafficking of persons, § 5-18-103.

32
33 SECTION 5. Arkansas Code § 5-70-103 is amended to read as follows:

34 5-70-103. Sexual solicitation.

35 (a) A person commits the offense of sexual solicitation if he or she:

36 (1) Offers to pay a fee to a person to engage in sexual activity

1 with him or her or another person; or

2 (2) Solicits or requests a person to engage in sexual activity
3 with him or her in return for a fee.

4 (b) Sexual solicitation is a:

5 (1) Class B misdemeanor for the first offense; and

6 (2) Class A misdemeanor for ~~the second and subsequent offenses a~~
7 second or subsequent offense.

8 (c) It is an affirmative defense to prosecution under this section
9 that the person engaged in an act of sexual solicitation as a result of being
10 a victim of trafficking of persons, § 5-18-103.

11
12 SECTION 6. Arkansas Code Title 12 is amended to add a new chapter to
13 read as follows:

14
15 Chapter 19

16 Human Trafficking – Prevention and Law Enforcement

17
18 12-19-101. State Task Force for the Prevention of Human Trafficking.

19 (a)(1) The Attorney General may establish a State Task Force for the
20 Prevention of Human Trafficking.

21 (2) The task force shall address all aspects of human
22 trafficking, including sex trafficking and labor trafficking of both United
23 States citizens and foreign nationals.

24 (b) If established, representatives on the task force shall be
25 appointed by the Attorney General and may include representatives from:

26 (1) The office of the Attorney General;

27 (2) The office of the Governor;

28 (3) The Department of Labor;

29 (4) The Department of Health;

30 (5) The Department of Human Services;

31 (6) The Arkansas Association of Chiefs of Police;

32 (7) The Arkansas Sheriffs' Association;

33 (8) The Department of Arkansas State Police;

34 (9) The Arkansas Prosecuting Attorneys Association;

35 (10) Local law enforcement; and

36 (11) Nongovernmental organizations such as:

1 (A) Those specializing in the problems of human
2 trafficking;

3 (B) Those representing diverse communities
4 disproportionally affected by human trafficking;

5 (C) Agencies devoted to child services and runaway
6 services; and

7 (D) Academic researchers dedicated to the subject of human
8 trafficking.

9 (c) If the task force is created by the Attorney General, he or she
10 may invite federal agencies that operate in the state to be members of the
11 task force, including without limitation:

12 (1) The Federal Bureau of Investigation;

13 (2) United States Immigration and Customs Enforcement; and

14 (3) The United States Department of Labor.

15 (d) If the task force is created by the Attorney General, the task
16 force shall:

17 (1) Develop a state plan;

18 (2) Coordinate the implementation of the state plan;

19 (3) Coordinate the collection and sharing of human trafficking
20 data among government agencies in a manner that ensures that the privacy of
21 victims of human trafficking is protected and that the data collection shall
22 respect the privacy of victims of human trafficking;

23 (4) Coordinate the sharing of information between agencies to
24 detect individuals and groups engaged in human trafficking;

25 (5) Explore the establishment of state policies for time limits
26 for the issuance of law enforcement agency endorsements as described in 8
27 C.F.R. § 214.11(f)(1), as it existed on January 1, 2013;

28 (6) Establish policies to enable state government to work with
29 nongovernmental organizations and other elements of the private sector to
30 prevent human trafficking and provide assistance to victims of human
31 trafficking who are United States citizens or foreign nationals;

32 (7) Evaluate various approaches used by state and local
33 governments to increase public awareness of human trafficking, including
34 trafficking of United States citizens and foreign national victims;

35 (8) Develop curriculum and train law enforcement agencies,
36 prosecutors, public defenders, judges, and others involved in the criminal

1 and juvenile justice systems on:

2 (A) Offenses under the Arkansas Human Trafficking Act of
3 2013, § 5-18-101 et seq.;

4 (B) Methods used in identifying victims of human
5 trafficking who are United States citizens or foreign nationals, including
6 preliminary interview techniques and appropriate questioning methods;

7 (C) Methods for prosecuting human traffickers;

8 (D) Methods of increasing effective collaboration with
9 nongovernmental organizations and other relevant social service organizations
10 in the course of investigating and prosecuting a human trafficking case;

11 (E) Methods for protecting the rights of victims of human
12 trafficking, taking into account the need to consider human rights and
13 special needs of women and minors;

14 (F) The necessity of treating victims of human trafficking
15 as crime victims rather than criminals; and

16 (G) Methods for promoting the safety of victims of human
17 trafficking; and

18 (9) Submit a report of its findings and recommendations to the
19 Governor, the Speaker of the House of Representatives, and the President Pro
20 Tempore of the Senate.

21
22 SECTION 7. Arkansas Code § 16-93-618(a)(1), concerning sentencing for
23 certain Class Y felonies, is amended to read as follows:

24 (a)(1) Notwithstanding any law allowing the award of meritorious good
25 time or any other law to the contrary, ~~any~~ a person who is found guilty of or
26 pleads guilty or nolo contendere to subdivisions (a)(1)(A)–~~(H)~~ (I) of this
27 section shall not be eligible for parole or community ~~punishment~~ correction
28 transfer, except as provided in subdivision (a)(3) or subsection (c) of this
29 section, until the person serves seventy percent (70%) of the term of
30 imprisonment to which the person is sentenced, including a sentence
31 prescribed under § 5-4-501:

32 (A) Murder in the first degree, § 5-10-102;

33 (B) Kidnapping, Class Y felony, § 5-11-102;

34 (C) Aggravated robbery, § 5-12-103;

35 (D) Rape, § 5-14-103;

36 (E) Trafficking of persons, Class Y felony, § 5-18-103;

1 ~~(E)~~(F) *Causing a catastrophe, § 5-38-202(a);*
2 ~~(F)~~(G) *Manufacturing methamphetamine, § 5-64-423(a) or the*
3 *former § 5-64-401;*
4 ~~(G)~~(H) *Trafficking methamphetamine, § 5-64-440(b)(1); or*
5 ~~(H)~~(I) *Possession of drug paraphernalia with the purpose*
6 *to manufacture methamphetamine, the former § 5-64-403(c)(5).*

7
8 SECTION 8. *Arkansas Code Title 16, Chapter 118, is amended to add a*
9 *section to read as follows:*

10 16-118-109. Civil cause of action for victims of human trafficking.

11 (a) As used in this section, "victim of human trafficking" means the
12 same as defined in § 5-18-102.

13 (b) An individual who is a victim of human trafficking may bring a
14 civil action in any appropriate state court.

15 (c) The court may award actual damages, compensatory damages, punitive
16 damages, injunctive relief, or any other appropriate relief.

17 (d) A prevailing plaintiff shall also be awarded attorney's fees and
18 costs.

19 (e) Three (3) times actual damages shall be awarded on proof of actual
20 damages when a defendant's acts were willful and malicious.

21 (f)(1) A statute of limitation period imposed for the filing of a
22 civil action under this section will not begin to run until the plaintiff
23 discovers that the human trafficking incident occurred and that the defendant
24 caused, was responsible for, or profited from the human trafficking incident.

25 (2) If the plaintiff is a minor, the limitation period will not
26 begin until he or she is eighteen (18) years of age.

27 (3) If the plaintiff is under a disability at the time the cause
28 of action accrues so that it is impossible or impracticable for him or her to
29 bring an action, the time of the disability will not be part of the time
30 limited for the commencement of the action.

31 (4) If the plaintiff is subject to threats, intimidation,
32 manipulation, or fraud perpetrated by the defendant or by any person acting
33 in the interest of the defendant, the time period during which the threats,
34 intimidation, manipulation, or fraud occurred will not be part of the statute
35 of limitations for the commencement of this action.

36 (5) A defendant is estopped to assert a defense of the statute

1 of limitations when the expiration of the statute of limitations is due to
2 conduct by the defendant that induced the plaintiff to delay the filing of
3 the action or placed the plaintiff under duress.

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6 /s/D. Meeks
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