

1 State of Arkansas As Engrossed: H3/2/21 H3/9/21 H4/15/21 S4/22/21

2 93rd General Assembly

A Bill

3 Regular Session, 2021

HOUSE BILL 1554

4

5 By: Representative Penzo

6 By: Senator B. Ballinger

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For An Act To Be Entitled

9 AN ACT TO ESTABLISH SAFE HARBOR PROVISIONS FOR
10 VICTIMS OF HUMAN TRAFFICKING; TO ESTABLISH AN
11 AFFIRMATIVE DEFENSE; AND FOR OTHER PURPOSES.

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Subtitle

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TO ESTABLISH SAFE HARBOR PROVISIONS FOR
16 VICTIMS OF HUMAN TRAFFICKING; AND TO
17 ESTABLISH AN AFFIRMATIVE DEFENSE.

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

21

22 SECTION 1. Arkansas Code Title 5, Chapter 2, Subchapter 2, is amended
23 to add an additional section to read as follows:

24 5-2-210. Human trafficking – Affirmative defense.

25 (a) As used in this section, "victim of trafficking of persons" means
26 a person who has been subjected to trafficking of persons, § 5-18-103.

27 (b) It is an affirmative defense to an offense listed under subsection
28 (c) of this section if at the time a person engaged in the conduct charged to
29 constitute the offense the person was:

30 (1) A victim of trafficking of persons; and

31 (2) Engaged in the offense as a result of the trafficking of
32 persons.

33 (c) The affirmative defense under this section may be raised only in a
34 prosecution for one (1) or more of the following offenses:

35 (1) Forgery, § 5-37-201;

36 (2) Defrauding a prospective adoptive parent, § 5-37-216;



1 (3) A prostitution offense under § 5-70-101 et seq.;

2 (4) Obscene performance at a live public show, § 5-68-305; or

3 (5) A controlled substance offense under § 5-64-401 et seq. that
4 is not a Class Y felony.

5
6 SECTION 2. Arkansas Code § 5-18-102(5)(B), concerning the definition
7 of "involuntary servitude" as used in the Human Trafficking Act of 2013, is
8 amended to read as follows:

9 (B) Abuse or threatened abuse of ~~the~~ law or legal process;

10
11 SECTION 3. Arkansas Code § 5-18-102, concerning definitions used in
12 the Human Trafficking Act of 2013, is amended to add additional subdivisions
13 to read as follows:

14 (16) "Abuse or threatened abuse of law or legal process" means
15 the use or threatened use of a law or legal process, whether administrative,
16 civil, or criminal, in any manner or for any purpose for which the law was
17 not designed, in order to exert pressure on another person to cause that
18 person to take some action or refrain from taking some action; and

19 (17) "Serious harm" means any harm, whether physical or
20 nonphysical, including psychological, financial, or reputational harm, that
21 is sufficiently serious, under all the surrounding circumstances, to compel a
22 reasonable person of the same background and in the same circumstances to
23 perform or to continue performing labor or a service in order to avoid
24 incurring the harm.

25
26 SECTION 4. Arkansas Code § 5-18-103(a), concerning the elements of the
27 offense of trafficking of persons, is amended to read as follows:

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

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

33 (2) Benefits financially or benefits by receiving anything of
34 value from participation in a venture under subdivision (a)(1) of this
35 section;

36 (3) Subjects a person to involuntary servitude;

1 (4) Recruits, entices, solicits, isolates, harbors, transports,
2 provides, maintains, or obtains a minor for commercial sexual activity;

3 (5) Sells or offers to sell travel services that he or she knows
4 include an activity prohibited under subdivisions (a)(1)-(4) of this section;

5 (6) Recruits, entices, solicits, isolates, harbors, transports,
6 provides, maintains, or obtains a pregnant woman for the purpose of causing
7 the pregnant woman ~~by the use of or threatened use of physical force to place~~
8 ~~the baby who is not yet born for adoption~~ to place her unborn child for
9 adoption by:

10 (A) The use of or threatened use of physical force;

11 (B) The physical restraint or threat of physical restraint
12 of a person;

13 (C) Serious physical injury or threat of serious physical
14 injury to a person;

15 (D) Abuse or threatened abuse of law or legal process;

16 (E) Any scheme, plan, or pattern that has a purpose to
17 cause the pregnant woman to believe that, if the pregnant woman does not
18 place the unborn child for adoption, a person would suffer serious physical
19 injury or physical restraint; or

20 (F) Means of serious harm or threats of serious harm to a
21 person; or

22 (7) *Benefits financially or benefits by receiving anything*
23 *of value from participating in an act described under subdivision (a)(6) of*
24 *this section.*

25
26 SECTION 5. Arkansas Code § 16-90-1412(c), concerning sealing
27 convictions for victims of human trafficking, is amended to read as follows:

28 (c) The court shall grant the uniform petition under this section if
29 it finds by a preponderance of the evidence that:

30 (1) The petitioner was convicted of prostitution, § 5-70-102;
31 and

32 (2)(A) The conviction was obtained as a result of the
33 petitioner's having been a victim of human trafficking.

34 (B) A finding concerning the affirmative defense under §
35 5-2-210 does not affect a finding under subdivision (c)(2)(A) of this
36 section, and the petitioner is not required to have raised the affirmative

1 defense under § 5-2-210.

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/s/Penzo

APPROVED: 5/3/21