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A Bill

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HOUSE BILL

5
6 By: Representatives D. Meeks

7 Filed with: Arkansas Legislative Council
8 pursuant to A.C.A. §10-3-217.

9 For An Act To Be Entitled

10 AN ACT ESTABLISHING THE HUMAN TRAFFICKING ACT OF
11 2013; AND FOR OTHER PURPOSES.

12 Subtitle

13 ESTABLISHING THE HUMAN TRAFFICKING ACT OF
14 2013.

15
16
17
18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 SECTION 1. Arkansas Code § 5-1-109(c), regarding the period of time
22 for which criminal charges may be brought against a defendant for certain
23 criminal offenses, is amended to read as follows:

24 (c) If the period prescribed in subsection (b) of this section has
25 expired, a prosecution may ~~nevertheless~~ be commenced for:

26 (1) ~~Any~~ An offense involving either fraud or breach of a
27 fiduciary obligation, within one (1) year after the offense is discovered or
28 should reasonably have been discovered by an aggrieved party or by a person
29 who has a legal duty to represent an aggrieved party and who is himself or
30 herself not a party to the offense; ~~and~~

31 (2)(A) ~~Any~~ An offense that is concealed involving felonious
32 conduct in office by a public servant at any time within five (5) years after
33 he or she leaves public office or employment or within five (5) years after
34 the offense is discovered or should reasonably have been discovered,
35 whichever is sooner.

36 (B) However, ~~in no event does~~ this subdivision (c)(2) does

1 not extend the period of limitation by more than ten (10) years after the
2 commission of the offense-; and

3 (3) An offense under the Human Trafficking Act of 2013, § 5-18-
4 101 et seq., if the victim could not have reasonably discovered the crime due
5 to circumstances resulting from the human trafficking situation, such as:

6 (A) Psychological trauma;

7 (B) Social, cultural, or linguistic isolation; or

8 (C) The inability to access services.

9
10 SECTION 2. Arkansas Code Title 5, Chapter 2, Subchapter 6 is amended
11 to add a new section to read as follows:

12 5-2-623. Victim immunity from prosecution.

13 (a) As used in this section:

14 (1) "Commercial sex act" means any sex act for which anything of
15 value is given, promised, or received, directly or indirectly, by a person;

16 (2) "Minor" means any person less than eighteen (18) years of
17 age;

18 (3)(A) "Sex act" means any touching of the sexual or other
19 intimate parts of another person for the purpose of gratifying the sexual
20 desire of any person.

21 (B) "Sex act" includes without limitation the touching of
22 the person as well as touching by the person, whether directly or through
23 clothing;

24 (4)(A) "Sexually explicit performance" means an act or show,
25 whether public or private, live, photographed, recorded, or videotaped
26 intended to:

27 (i) Either:

28 (a) Appeal to the prurient interest; or

29 (b) Depict, in a patently offensive way,
30 sexual conduct; and

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

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

36 (5) "Victim of human trafficking" means a person, whether a

1 United States citizen or foreign national, who has been subjected to an
2 offense under the Human Trafficking Act of 2013, § 5-18-101 et seq.

3 (b) A victim of human trafficking is not criminally liable for any
4 commercial sex act or sexually explicit performance committed as a direct
5 result of, incidental to, or related to being subject to an offense under the
6 Human Trafficking Act of 2013, § 5-18-101 et seq.

7
8 SECTION 3. Arkansas Code § 5-11-108 is repealed.

9 ~~5-11-108. Trafficking of persons.~~

10 ~~(a) As used in this section:~~

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

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

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

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

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

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

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

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

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

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

36 ~~(A) Involuntary servitude;~~

- 1 ~~(B) Peonage;~~
- 2 ~~(C) Debt bondage;~~
- 3 ~~(D) Slavery;~~
- 4 ~~(E) Marriage;~~
- 5 ~~(F) Adoption; or~~
- 6 ~~(G) Sexual conduct; or~~

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

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

11

12 SECTION 4. Arkansas Code Title 5 is amended to add a new chapter to
 13 read as follows:

14 Chapter 18

15 The Human Trafficking Act of 2013

16

17 5-18-101. Title.

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

20

21 5-18-102. Definitions.

22 As used in this chapter:

23 (1) "Commercial sex act" means any sex act for which anything of value
 24 is given, promised, or received, directly or indirectly, by any person;

25 (2) "Debt coercion" means exploitation of the status or condition of a
 26 debtor arising from a pledge by the debtor of his or her personal services or
 27 those of a person under his or her control as a security or payment for debt,
 28 if the:

29 (A) Value of those services as reasonably assessed is not
 30 applied toward the liquidation of the debt;

31 (B) Length and nature of those services are not respectively
 32 limited and defined; or

33 (C) Principal amount of the debt does not reasonably reflect the
 34 value of the items or services for which the debt was incurred;

35 (3) "Extortion" means the obtaining of property, labor, a service, a
 36 commercial sex act, or a sexually explicit performance from another person,

1 or of an official act of a public officer, through a wrongful use of force or
2 fear, or under color of official right;

3 (4) "Financial harm" means credit extortion, criminal violation of the
4 usury laws, or employment contracts that violate the statutes of frauds, § 4-
5 59-101;

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

7 (6) "Minor" means a person less than eighteen (18) years of age;

8 (7) "Person" means any individual, corporation, government
9 corporation, partnership, association, trust, firm, joint stock company,
10 state, municipality, commission, political subdivision, interstate body, any
11 other government body, or any other legal entity;

12 (8) "Serious harm" means any harm, whether physical or nonphysical,
13 including without limitation psychological, financial, or reputational harm,
14 that is sufficiently serious, under all the surrounding circumstances, to
15 compel a reasonable person of the same background and in the same
16 circumstances as the victim to perform or to continue performing labor or
17 service, a commercial sex act, or a sexually explicit performance in order to
18 avoid incurring that harm;

19 (9) "Service" means an act committed at the behest of, under the
20 supervision of, or for the benefit of another person;

21 (10)(A) "Sex act" means any touching of the sexual or other intimate
22 parts of another person for the purpose of gratifying the sexual desire of
23 any person.

24 (B) "Sex act" includes without limitation the touching of the
25 person as well as touching by the person, whether directly or through
26 clothing;

27 (11)(A) "Sexually explicit performance" means an act or show, whether
28 public or private, live, photographed, recorded, or videotaped intended to:

29 (i) Either:

30 (a) Appeal to the prurient interest; or

31 (b) Depict, in a patently offensive way, sexual
32 conduct; and

33 (ii) Do so in a way that lacks literary, artistic,
34 political, or scientific value;

35 (B) "Sexually explicit performance" includes without limitation
36 any performance that depicts sexual conduct by a minor or that would create

1 criminal liability under § 5-27-303 or § 5-27-304; and

2 (12) “Victim of human trafficking” means any person, whether a United
3 States citizen or foreign national, who has been subjected to an offense
4 under this chapter.

5
6 5-18-103. Involuntary servitude.

7 (a) A person commits the offense of involuntary servitude if the
8 person knowingly:

9 (1) Subjects another person to:

10 (A) A commercial sex act;

11 (B) A sexually explicit performance; or

12 (C) Labor or a service; and

13 (2) Violates subdivision (a)(1) of this section through the use
14 of any of the following means or any combination of the following means:

15 (A) Causing or threatening to cause serious harm to
16 another person;

17 (B) Physically restraining or threatening to physically
18 restrain another person;

19 (C) Kidnapping or attempting to kidnap any person;

20 (D) Abusing or threatening to abuse the law or legal
21 process;

22 (E) Taking the personal or real property of another
23 person;

24 (F) Destroying, concealing, removing, confiscating, or
25 possessing any actual or purported passport or other immigration document or
26 any other actual or purported government identification document of another
27 person;

28 (G) Extortion or blackmail;

29 (H) Deception or fraud;

30 (I) Coercion or duress or menace;

31 (J) Debt coercion;

32 (K) Causing or threatening to cause financial harm to or
33 exerting or threatening to exert financial control over another person;

34 (L) Facilitating or controlling another person’s access to
35 an addictive controlled substance; or

36 (M) Using any scheme, plan, or pattern, whether overt or

1 subtle, intended to cause another person to believe that if the other person
2 did not perform a commercial sex act, a sexually explicit performance, labor,
3 or a service, that other person or another person would suffer serious harm
4 or physical restraint.

5 (b) Involuntary servitude is a Class A felony.

6
7 5-18-104. Sexual servitude of a minor.

8 (a) A person commits the offense of sexual servitude of a minor if the
9 person knowingly:

10 (1) Recruits, entices, solicits, isolates, harbors, transports,
11 provides, obtains, or maintains any minor for the purpose of a commercial sex
12 act or sexually explicit performance through any means; or

13 (2) Benefits financially or receives anything of value from
14 participation in a venture which has engaged in an act described in
15 subdivision (a)(1) of this section.

16 (b) Sexual servitude of a minor is a Class A felony.

17 (c) For the purposes of this section, it is not required that the
18 defendant have knowledge of the age of the victim, nor is reasonable mistake
19 of age a defense to liability under this section.

20
21 5-18-105. Human trafficking.

22 (a) A person commits the offense of human trafficking if he or she
23 knowingly:

24 (1) Recruits, entices, solicits, isolates, harbors, transports,
25 provides, obtains, or maintains another person knowing that the other person
26 will be subjected to involuntary servitude; or

27 (2) Benefits, financially or by receiving anything of value from
28 participation in a venture which has engaged in an act described in
29 subdivision (a)(1) of this section.

30 (b) Human trafficking is a Class B felony.

31
32 5-18-106. Unlawful conduct with respect to documents.

33 (a) A person commits the offense of unlawful conduct with respect to
34 documents if he or she knowingly destroys, conceals, removes, confiscates, or
35 possesses any actual or purported government identification document of
36 another person:

1 (1) In the course of a violation of or with a purpose to violate
2 § 5-18-104; or

3 (2) To prevent or restrict the ability of the other person to
4 move or travel, in order to maintain the labor or services or commercial sex
5 acts of that other person, when the other person is or has been a victim of §
6 5-18-105.

7 (b) Unlawful conduct with respect to documents is a Class C felony.

8
9 5-18-107. Patronizing a victim of human trafficking.

10 (a) A person commits the offense of patronizing a victim of human
11 trafficking if he or she recklessly engages in a commercial sex act with
12 another person knowing that the other person is a victim of an offense under
13 this chapter.

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

15
16 5-18-108. Obstruction of this chapter.

17 (a) A person commits the offense of obstruction of this chapter if he
18 or she knowingly obstructs or in any way interferes with or prevents the
19 enforcement of any offense under this chapter.

20 (b) Obstruction of this chapter is classified at the same felony level
21 as the underlying offense in subsection (a) of this section.

22
23 5-18-109. Additional penalties.

24 In addition to any other statutorily authorized sentence or fine, a
25 person convicted of an offense under this chapter is also subject to the
26 following penalties:

27 (1) The person shall pay for and satisfactorily attend and
28 complete a court-approved educational course on the effects of prostitution;
29 and

30 (2)(A) The person shall be assessed a civil penalty not to
31 exceed fifty-thousand dollars (\$50,000).

32 (B) The proceeds from civil penalties assessed under this
33 chapter shall be paid to the court clerk for the sole purpose of paying the
34 administrative costs of treatment-based prostitution programs.

35
36 5-18-110. Criminal liability of business entities.

1 (a) As used in this section, "organization" means the same as defined
2 in § 5-2-501.

3 (b) In addition to any other statutorily authorized sentence or fine,
4 an organization convicted of an offense under this chapter is subject to any
5 combination of the following:

6 (1) A fine of not more than one million dollars (\$1,000,000);

7 (2) A suspension or revocation of any license, permit, or prior
8 approval granted to it by a state or local government agency; (3)
9 A court order to dissolve or reorganize; and

10 (4) Any other relief as is equitable, including ordering the
11 forfeiture of assets or otherwise making provision for restitution.

12
13 5-18-111. Restitution.

14 (a) As used in this section, "victim" means a victim of human
15 trafficking, 5-18-105.

16 (b) In addition to any other court-ordered restitution as provided by
17 law, a person convicted of violating § 5-18-105 shall be ordered to pay
18 restitution to the victim as provided in this section.

19 (c)(1) If the victim dies as a result of the human trafficking, a
20 surviving spouse of the victim is eligible for restitution under this
21 section.

22 (2) If the victim does not have a surviving spouse,
23 restitution shall be paid to the victim's issue per stirpes.

24 (3) If the victim does not have a surviving spouse or
25 issue, restitution shall be paid to the victim's estate.

26 (d) A beneficiary under this section may not receive any funds from
27 restitution if he or she engaged in violations of this chapter.

28 (e) Restitution under this section includes without limitation:

29 (1) Costs of medical and psychological treatment, including
30 physical and occupational therapy and rehabilitation;

31 (2) Costs of necessary transportation, temporary housing, and
32 child care;

33 (3) Attorney's fees and other court-related costs such as victim
34 advocate fees;

35 (4) The greater of:

36 (A) The value of the victim's labor as guaranteed under

1 the minimum wage and overtime provisions of the Fair Labor Standards Act of
2 1938, 29 U.S.C. 8, 201 et seq.; or

3 (B) The gross income or value to the defendant of the
4 victim's labor or services or of any commercial sex acts engaged in by the
5 victim while in the human trafficking situation;

6 (5) Return of property, cost of damage to property, or full
7 value of property if destroyed or damaged beyond repair;

8 (6) Compensation for emotional distress, pain, and suffering;

9 (7)(A) Expenses incurred by a victim and any household members
10 or other family members in relocating away from the defendant or the
11 defendant's associates, including without limitation:

12 (i) Deposits for utilities and telephone service;

13 (ii) Deposits for rental housing; and

14 (iii) Temporary lodging and food expenses, clothing,
15 and personal items.

16 (B) Expenses incurred under this subdivision (e)(7) shall
17 be verified by law enforcement to be necessary for the personal safety of the
18 victim or household or family members, or by a mental health treatment
19 provider to be necessary for the emotional well-being of the victim;

20 (8) Costs of repatriation of the victim to his or her home
21 country, if applicable; and

22 (9) Any other losses suffered by the victim as a result of
23 violations of § 5-18-105.

24 (d)(1) Restitution shall be paid to the victim promptly upon the
25 conviction of the defendant, with the proceeds from property forfeited under
26 this chapter applied first to payment of restitution.

27 (2) The return of the victim to his or her home country or other
28 absence of the victim from the state does not prevent the victim from
29 receiving restitution.

30 (e) Nonpayment or delay in payment of restitution is governed by § 5-
31 4-205.

32
33 5-18-112. Asset forfeiture.

34 (a) A person who commits an offense under this chapter shall forfeit
35 to the state any profits or proceeds and any interest or property that the
36 court determines to have been acquired or maintained as a result of

1 committing an offense under this chapter.

2 (b) The following are subject to forfeiture to the state, and a
3 property right does not exist in them:

4 (1) All assets:

5 (A) Of a person engaged in planning or perpetrating an act
6 in this state that commits an offense under this chapter and all assets
7 affording a person a source of influence over a trafficked individual;

8 (B) Acquired or maintained by a person with the purpose of
9 supporting, planning, conducting, or concealing an act in this state that
10 constitutes an offense under this chapter; or

11 (C) Derived from, involved in, or used or intended to be
12 used to commit an act in this state that constitutes an offense under this
13 chapter.

14 (c) Upon petition by the prosecuting attorney at any time following
15 sentencing of a defendant for an offense under this chapter, the court shall
16 conduct a hearing to determine whether any asset is subject to forfeiture
17 under this section.

18 (d)(1) If the court determines under subsection (c) of this section
19 that there is an asset subject to forfeiture under this section, the court
20 shall direct the prosecuting attorney to seize the asset declared forfeited
21 under this section.

22 (2) All moneys forfeited and the proceeds from sale of all
23 assets forfeited under this section shall first be used to pay restitution to
24 victims of human trafficking and subsequently to pay any damages awarded to
25 victims in a civil action.

26 (3) Any remaining assets shall go to the Crime Victims
27 Reparations Revolving Fund, § 16-90-717, and toward the reimbursement of any
28 local police department that has used its own funds in the detection,
29 investigation, apprehension, and prosecution of persons for the commission of
30 an offense under this chapter.

31 (e) Overseas assets of persons convicted of an offense under this
32 chapter are subject to forfeiture to the extent they can be retrieved by the
33 state.

34
35 SECTION 5. Arkansas Code Title 11, Chapter 4, Subchapter 4 is amended
36 to add a new section to read as follows:

1 11-4-406. Nonpayment of wages.

2 (a)(1) A person commits the offense of nonpayment of wages in the
3 first degree if he or she knowingly fails or refuses to pay wages to a person
4 who is entitled to earned wages.

5 (2) Nonpayment of wages in the first degree is a Class C felony.

6 (b)(1)(A) A person commits the offense of nonpayment of wages in the
7 second degree if he or she recklessly fails or refuses to pay wages to a
8 person who is entitled to earned wages.

9 (B)(i) Nonpayment of wages in the second degree is a
10 Class D felony if the amount owed is two thousand dollars (\$2,000) or more.

11 (ii) Otherwise, nonpayment of wages in the second
12 degree is a Class A misdemeanor.

13 (2) It is a defense to prosecution under subdivision (b)(1)(A)
14 of this section if the person who is required to pay wages can demonstrate a
15 good-faith reason why the wages were not paid.

16 (c) In addition to any fine, a person who commits an offense under
17 this section shall pay restitution to the person whose wages were not paid
18 equal to all wages owed to that person.

19 (d) A person who is a victim of an offense under this section may
20 bring a civil action in the appropriate state court to recover all wages owed
21 by the person.

22
23 SECTION 6. Arkansas Code Title 12 is amended to add a new chapter to
24 read as follows:

25 Chapter 19

26 Human Trafficking - Prevention and Law Enforcement

27
28 12-19-101. Definitions.

29 As used in this chapter:

30 (1) "Commercial sex act" means a sex act for which anything of value
31 is given, promised, or received, directly or indirectly, by a person;

32 (2) "Human trafficking" means an offense under the Human Trafficking
33 Act of 2013, § 5-18-101 et seq.;

34 (3) "Labor" means work of economic or financial value;

35 (4) "Minor" means any person less than eighteen (18) years of age;

36 (5)(A) "Sex act" means any touching of the sexual or other intimate

1 parts of another person for the purpose of gratifying the sexual desire of
2 any person. (B) "Sex act" includes without limitation touching
3 of the person as well as touching by the person, whether directly or through
4 clothing;

5 (6)(A) "Sexually explicit performance" means an act or show, whether
6 public or private, live, photographed, recorded, or videotaped intended to:

7 (i) Either:

8 (a) Appeal to the prurient interest; or

9 (b) Depict, in a patently offensive way, sexual
10 conduct; and

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

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

16 (7) "Victim of human trafficking" means a person, whether a United
17 States citizen or foreign national, who has been subjected to an offense
18 under the Human Trafficking Act of 2013, § 5-18-101 et seq.

19
20 12-19-102. State Task Force for the Prevention of Human Trafficking.

21 (a)(1) The Governor shall establish the State Task Force for the
22 Prevention of Human Trafficking to develop and implement a State Plan for the
23 Prevention of Human Trafficking.

24 (2) The task force shall meet at least four (4) times annually
25 and shall address all aspects of human trafficking, including sex trafficking
26 and labor trafficking of both United States citizens and foreign nationals.

27 (b) The Governor shall appoint the members of the task force, which
28 shall include, at a minimum, representatives from:

29 (1) The office of the Governor;

30 (2) The office of the Attorney General;

31 (3) The Department of Labor;

32 (4) The Department of Health;

33 (5) The Department of Human Services;

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

35 (7) The Arkansas Sheriffs Association;

36 (8) The Department of Arkansas State Police;

1 (9) Local law enforcement; and

2 (10) Nongovernmental organizations such as:

3 (A) Those specializing in the problems of human
4 trafficking;

5 (B) Those representing diverse communities
6 disproportionally affected by human trafficking;

7 (C) Agencies devoted to child services and runaway
8 services; and

9 (D) Academic researchers dedicated to the subject of human
10 trafficking.

11 (c) The Governor shall invite to be members of the task force
12 representatives of the United States Attorneys' offices and of federal law
13 enforcement agencies operating within the state, including:

14 (1) The Federal Bureau of Investigation;

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

16 (3) The United States Department of Labor.

17 (d) The task force shall carry out the following activities either
18 directly or via one (1) or more of its constituent agencies:

19 (1) Develop the state plan;

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

21 (3) Coordinate the collection and sharing of human trafficking
22 data among government agencies, and the data collection shall respect the
23 privacy of victims of human trafficking;

24 (4) Coordinate the sharing of information between agencies for
25 the purposes of detecting individuals and groups engaged in human
26 trafficking;

27 (5) Explore the establishment of state policies for time limits
28 for the issuance of Law Enforcement Agency endorsements as described in 8
29 C.F.R. § 214.11(f)(1), as it existed on January 1, 2013;

30 (6) Establish policies to enable state government to work with
31 nongovernmental organizations and other elements of civil society to prevent
32 human trafficking and provide assistance to United States citizen and foreign
33 national victims of human trafficking;

34 (7) Review the existing services and facilities to meet the
35 needs of victims of human trafficking and recommend a system that would
36 coordinate services, including without limitation:

1 (A) Health services, including mental health services and
2 housing;

3 (B) Education and job training;

4 (C) English as a Second Language classes;

5 (D) Interpreting services;

6 (E) Legal and immigration services; and

7 (F) Victim compensation;

8 (8) Evaluate various approaches used by state and local
9 governments to increase public awareness of human trafficking, including
10 trafficking of United States citizens and foreign national victims; and

11 (9) Submit an annual report of its findings and recommendations
12 to the Governor, the Speaker of the House of Representatives, and the
13 President of the Senate on or before December 31 of each calendar year.

14
15 12-19-103. Data collection and dissemination.

16 (a) In cooperation with other appropriate authorities, the State Task
17 Force for the Prevention of Human Trafficking shall, in cooperation with
18 other appropriate authorities, collect and periodically publish statistical
19 data on human trafficking.

20 (b) The State Task Force for the Prevention of Human Trafficking shall
21 elicit the cooperation and assistance of other government agencies,
22 nongovernmental organizations, and other elements of civil society as
23 appropriate to assist in the data collection required under subsection (a) of
24 this section.

25 (c) The appropriate authorities in each agency that play a vital role
26 in addressing human trafficking shall make best efforts to collect
27 information relevant to tracking progress on human trafficking, including
28 without limitation:

29 (1) Numbers of:

30 (A) Investigations;

31 (B) Arrests;

32 (C) Prosecutions; and

33 (D) Successful convictions of human traffickers and those
34 committing human trafficking-related crimes;

35 (2) The estimated number and characteristics of persons engaged
36 in violations of offenses under the Human Trafficking Act of 2013, § 5-18-101

1 et seq., as well as persons who purchase or receive commercial sex acts or
2 sexually explicit performances or labor or services performed by victims of
3 human trafficking;

4 (3) Statistics on the number and characteristics of victims of
5 human trafficking, including:

6 (A) Nationality;

7 (B) Age;

8 (C) Method of recruitment; and

9 (D) City, state, and country of origin;

10 (4) Human trafficking routes and patterns, if any transportation
11 took place; and

12 (5) Social and economic factors that contribute to and foster
13 the demand for all forms of exploitation of persons that leads to human
14 trafficking.

15
16 12-19-104. Training.

17 (a) The Attorney General shall provide mandatory training for law
18 enforcement agencies, prosecutors, public defenders, judges, juvenile
19 detention center staff, and others involved in the juvenile justice system
20 and criminal justice system, and other relevant officials in addressing human
21 trafficking.

22 (b) The training shall focus on:

23 (1) Offenses under the Human Trafficking Act of 2013, § 5-18-101
24 et seq.;

25 (2) Methods used in identifying United States citizen and
26 foreign national victims of human trafficking, including preliminary
27 interview techniques and appropriate questioning methods;

28 (3) Methods for prosecuting human traffickers;

29 (4) Methods of increasing effective collaboration with non-
30 governmental organizations and other relevant social service organizations in
31 the course of investigating and prosecuting a human trafficking case;

32 (5) Methods for protecting the rights of victims of human
33 trafficking, taking into account the need to consider human rights and
34 special needs of women and minors;

35 (6) The necessity of treating victims of human trafficking as
36 crime victims rather than criminals; and

1 (7) Methods for promoting the safety of victims of human
2 trafficking.

3 (c) The Attorney General shall seek the input and participation of
4 appropriate nongovernmental organizations and other relevant organizations in
5 the preparation and presentation of training provided for in this section.

6
7 12-19-105. Public awareness.

8 (a) In cooperation with appropriate nongovernmental organizations, the
9 Attorney General in cooperation with appropriate nongovernmental
10 organizations, shall prepare public awareness programs designed to educate
11 potential victims of human trafficking and their families on the risks of
12 victimization. Public awareness programs shall include without limitation:

13 (1) Information about the risks of becoming a victim of human
14 trafficking, including:

15 (A) Common recruitment techniques;

16 (B) Use of debt bondage and other coercive tactics;

17 (C) Risk of maltreatment, rape, and exposure to HIV/AIDS
18 and other sexually transmitted diseases; and

19 (D) Psychological harm related to victimization in human
20 trafficking cases;

21 (2) Information about the risks of engaging in commercial sex
22 and possible punishment;

23 (3) Information about victims' rights under state and federal
24 law;

25 (4) Methods for reporting suspected recruitment activities,
26 including information on relevant hotlines; and

27 (5) Information on the types of services available to victims of
28 human trafficking and how to access such services, including information on
29 relevant hotlines such as the National Human Trafficking Resource Center
30 hotline.

31 (b) In cooperation with other appropriate government agencies and
32 appropriate nongovernmental organizations or other elements of civil society,
33 the Attorney General in cooperation with other appropriate government
34 agencies and appropriate nongovernmental organizations or other elements of
35 civil society shall prepare and disseminate general public awareness
36 materials to educate the public on the extent of human trafficking of both

1 United States citizens and foreign nationals within the United States and to
2 discourage the demand that fosters the exploitation of persons and leads to
3 human trafficking.

4 (c)(1) Information in general public awareness materials may include:

5 (A) Information on the impact of human trafficking on
6 individual victims, whether United States citizens or foreign nationals;

7 (B) Aggregate information on domestic and international
8 human trafficking; and

9 (C) Warnings of the criminal consequences of engaging in
10 human trafficking.

11 (2) General public awareness materials may include:

12 (A) Pamphlets;

13 (B) Brochures;

14 (C) Posters;

15 (D) Advertisements in mass media; and

16 (E) Any other appropriate media.

17 (d) Public awareness programs and general public awareness materials
18 described in this section shall preserve the privacy of the victim and the
19 victim's family.

20 (e) All public awareness programs and general public awareness
21 materials shall be evaluated periodically to ensure their effectiveness.

22
23 12-19-106. Grants.

24 Subject to the availability of appropriations, the Department of
25 Finance and Administration shall make grants to units of local government,
26 Native American tribes, and nongovernmental victims' service organizations
27 to:

28 (1) Develop, expand, or strengthen victim service programs for
29 victims of human trafficking, whether United States citizens or foreign
30 nationals;

31 (2) Ensure the prevention of human trafficking; and

32 (3) Ensure protection for victims of human trafficking.

33
34 12-19-107. Role of nongovernmental organizations.

35 For each state initiative for the prevention of human trafficking, the
36 state shall seek out and enlist the cooperation and assistance of non-

1 governmental organizations, especially those:

2 (1) Specializing in human trafficking;

3 (2) Representing diverse communities disproportionately affected
4 by human trafficking;

5 (3) Agencies devoted to child services and runaway services; and

6 (4) Academic researchers dedicated to the subject of human
7 trafficking.

8
9 12-19-108. Post the nation human trafficking hotline.

10 (a) The following establishments shall post in a conspicuous place
11 near the entrance of the establishment or where posters and notices of this
12 type are customarily posted a poster described in subsection (b) of this
13 section at least eight and one-half by eleven inches (8 1/2" X 11) in size:

14 (1) Massage parlor, spa, or similar establishment that does not
15 necessarily require a license;

16 (2) Any establishment that has a retail liquor permit for off-
17 premises consumption;

18 (3) Strip club or other sexually oriented business;

19 (4) Restaurant;

20 (5) Airport;

21 (6) Train station;

22 (7) Highway rest stop;

23 (8) Hospital, health maintenance organization, or urgent care
24 center;

25 (9) Farm;

26 (10) High school; and

27 (11) Job recruitment center.

28 (b)(1) The poster shall read:

29 "If you or someone you know is being forced to engage in any activity and
30 cannot leave – whether it is commercial sex, housework, farm work, or any
31 other activity – call the National Human Trafficking Resource Center Hotline
32 at 1-888-373-7888 to access help and services.

33 • Victims of human trafficking are protected under United States
34 and Arkansas state law.

35 • The Hotline is:

36 1. Available 24 hours a day, 7 days a week

- 1 2. Toll-free
- 2 3. Operated by a non-profit, non-governmental organization
- 3 4. Anonymous & Confidential
- 4 5. Accessible in 170 languages
- 5 6. Able to provide help, referral to services, training, and
- 6 general information.”

7 (2) The poster shall be printed in English, Spanish, and any
8 other language mandated by the Voting Rights Act, Pub. L. 89-110, in the
9 county where the poster will be posted.

10 (3) The Attorney General shall provide each establishment with
11 notice of this section and with the required poster upon licensing and shall
12 place the poster described in this section on its public website for mandated
13 establishments to print as needed.

14
15 SECTION 7. Arkansas Code Title 16, Chapter 90, Subchapter 1 is amended
16 to add a new section to read as follows:

17 16-90-123. Violations of the Human Trafficking Act of 2013 - Sentence
18 enhancement.

19 (a) If a person is convicted of an offense contained in the Human
20 Trafficking Act of 2013, § 5-18-101 et seq., and that person is convicted of
21 an offense listed under subsection (b) of this section, and both convictions
22 stemmed from the same factual scenario, the person is subject to a sentence
23 enhancement of additional years, as described in subsection (c) of this
24 section.

25 (b) Conviction of any of the following offenses subjects a person to
26 an additional sentence enhancement under subsection (a) of this section:

- 27 (1) Any homicide, § 5-10-101 et seq.;
- 28 (2) Kidnapping, § 5-11-102;
- 29 (3) Rape, § 5-14-103;
- 30 (4) Sexual assault in the first degree, § 5-14-124;
- 31 (5) Sexual assault in the second degree, § 5-14-125; or
- 32 (6) Any attempt of an offense listed under this subsection.

33 (c) The sentencing enhancements under this section are as follows:

- 34 (1) If bodily injury occurred as a result of the offense, an
35 additional five (5) years to run consecutive to any sentence;
- 36 (2) If serious bodily injury occurred as a result of the

1 offense, an additional ten (10) years to run consecutive to any sentence; or
2 (3) If death occurred as a result of the offense, an additional
3 twenty (20) years to run consecutive to any sentence.

4 (d)(1) The determination of whether the bodily injury described in
5 subsection (c) of this section exists are decided by the trier of fact; and

6 (2) The determination of whether the bodily injury described in
7 subsection (c) of this section is serious are decided by the trier of fact.
8

9 SECTION 8. Arkansas Code Title 16 is amended to add a new chapter to
10 read as follows:

11 Chapter 100

12 Human Trafficking

13
14 16-100-101. Definitions.

15 For the purposes of this chapter:

16 (1) "Minor" refers to any person less than eighteen (18) years of age;

17 (2)(A) "Sex act" means any touching of the sexual or other intimate
18 parts of another person for the purpose of gratifying sexual desire of any
19 person.

20 (B) "Sex act" also includes touching of the person as well as
21 touching by the person, whether directly or through clothing; and

22 (3) "Victim of human trafficking" means any person, whether a United
23 States citizen or foreign national, who has been subjected to an offense
24 under this chapter.
25

26 16-100-102. Information for victims.

27 (a) The prosecuting attorney, with the assistance of the Attorney
28 General, shall provide victims of human trafficking, through appropriate and
29 qualified translation, or both, information concerning the legal rights of
30 the victim and the progress of relevant court and administrative proceedings
31 as applied to victims of human trafficking, including without limitation:

32 (1) Progress in the prosecution of a defendant;

33 (2) The convicted person's prison release dates; and

34 (3) The procedure for repatriating a victim to his or her
35 country of citizenship or lawful residence.

36 (b) The Attorney General shall provide victims of human trafficking

1 with a translated copy of a directory of local victim service organizations,
2 including legal services organizations that can assist victims in obtaining
3 or maintaining legal immigration status.

4 (c) The Crime Victims Reparations Board administering the Crime
5 Victims Reparations Revolving Fund under § 16-90-717 shall inform victims of
6 human trafficking of benefits that may be received under federal and state
7 laws and assist victims in obtaining such benefits.

8
9 16-100-103. Opportunity for presentation of a victim's view and
10 concerns.

11 (a) The prosecuting attorney shall provide an opportunity to a victim
12 of human trafficking, if the victim so desires, to present the victim's views
13 and concerns at appropriate stages of criminal proceedings against the person
14 charged with an offense under this chapter, in a manner not prejudicial to
15 the rights of the defendant.

16 (b) An appropriate and qualified interpreter shall be made available
17 to the victim during the course of legal proceedings.

18
19 16-100-104. Protection of victims.

20 (a) An investigative, prosecutorial, or other appropriate law
21 enforcement authority shall interview all persons arrested on charges of
22 prostitution and take all other steps necessary to identify victims of human
23 trafficking, including United States citizens and foreign nationals.

24 (b) When victims of human trafficking are identified, authorities
25 shall:

26 (1) Provide reasonable protection to those victims of human
27 trafficking to prevent recapture by the human traffickers and their
28 associates;

29 (2) Secure the victims and the victims' families from threats,
30 reprisals, or intimidation by the human traffickers and their associates; and

31 (3)(A) Ensure that the victims have an opportunity to consult
32 with a victim advocate or other appropriate person to develop a safety plan.

33 (B) Protection and security under this section is subject
34 to consent of the victim and the victim's family.

35
36 16-100-105. Appropriate implementation for minor victims.

1 (a) The provision of services to a minor victim of human trafficking
2 by the state, or by any institution or entity established or licensed by the
3 state, shall be carried out in a manner that is in the best interest of the
4 minor and appropriate to his or her situation.

5 (b) Special procedures shall be developed to accommodate minor
6 witnesses during the investigation and prosecution of offenders under this
7 chapter, including without limitation:

8 (1) Conducting testimony of a minor in facilities outside the
9 court setting or by video;

10 (2) Allowing the presence of a parent, legal guardian, or foster
11 parent during all testimony and court proceedings, if it is in the best
12 interest of the minor; and

13 (3) Reuniting the minor with family members, whether within or
14 outside the United States, whenever safe and possible.

15
16 16-100-106. Witness protection program.

17 (a) Victims of human trafficking and their family members, whether
18 United States citizens or foreign nationals, who are witnesses or potential
19 witnesses to an offense under this chapter are eligible for applicable
20 witness relocation and protection programs for victims of organized criminal
21 activity or other serious offenses, if it is determined that an offense
22 involving a crime of violence directed at the witness or potential witness is
23 likely to be committed.

24 (b) The programs may include:

25 (1) Relocation and residency;

26 (2) New identity and documents establishing identity;

27 (3) Employment and work authorization; and

28 (4) Protection of confidentiality of identity and location.

29
30 16-100-107. Protection of the privacy of victims.

31 In a prosecution for violations of an offense under this chapter, the
32 identity of the victim and the victim's family shall be kept confidential by
33 ensuring that names and identifying information of the victim and victim's
34 family are not released to the public, including release by the defendant.

35
36 16-100-108. Develop a state plan to provide services to victims of

1 human trafficking.

2 (a) The State Task Force for the Prevention of Human Trafficking shall
3 develop a plan, in consultation with nongovernmental organizations and other
4 elements of civil society, for the provision of appropriate services by
5 governmental and nongovernmental sources to victims of human trafficking and
6 any dependents accompanying the victims, whether United States citizens or
7 foreign nationals, or parents or guardians of minor victims, including
8 without limitation:

9 (1) Appropriate housing, taking into account the victim's status
10 as a victim of crime and including safe conditions for sleeping, eating, and
11 practicing personal hygiene;

12 (2) Psychological counseling in a native language of the victim
13 in order for him or her to be able to understand;

14 (3) Medical assistance;

15 (4) Childcare;

16 (5) Access to employment, educational, language, and training
17 opportunities;

18 (6) Legal assistance that may include the services of an
19 appropriate and qualified interpreter; and

20 (7) Other material assistance as appropriate;

21 (b) The governmental service providers described in the state plan
22 developed under subsection (a) of this section shall take into account the
23 age, gender, and special needs of victims and accompanying dependent children
24 in formulating plans to provide services to them and in delivering such
25 services.

26 (c) Plans developed in accordance with subsection (a) of this section
27 shall be submitted for approval to appropriate state authorities, which shall
28 also undertake periodic reviews and implementation of the plans to ensure
29 compliance with the requirements of this section and to ensure that all
30 victims are treated with respect for their human rights and dignity.

31

32 16-100-109. Access to the Crime Victims Reparations Revolving Fund.
33 Victims of human trafficking are entitled to forms of compensation
34 under § 16-90-701 et seq.

35

36 16-100-110. Refugee benefits.

1 Foreign national victims of human trafficking and their accompanying
2 dependent children are entitled to receive benefits in the same manner and to
3 the same extent as refugees.

4
5 16-100-111. Rights of human trafficking victims in shelters.

6 (a)(1) Victims of human trafficking shall not be given shelter in
7 prisons or other detention facilities for accused or convicted criminals.

8 (2) Victims of human trafficking who are minors shall not be
9 detained in prisons or other detention facilities for accused or convicted
10 criminals or juvenile delinquents under any circumstances.

11 (b) Residence in shelters or other facilities established or licensed
12 by the state for victims of human trafficking shall be voluntary, and victims
13 may decline to stay in shelters or other facilities.

14 (c) Victims of human trafficking residing in shelters or other
15 facilities established or licensed by the state shall have the option to
16 communicate with and receive visits from family, friends, attorneys, and
17 advocates.

18
19 16-100-112. Protection of human trafficking and domestic violence
20 shelters.

21 (a) A person who knowingly or negligently publishes, disseminates, or
22 otherwise discloses the location of any victim of human trafficking, any
23 human trafficking shelter or domestic violence shelter, or any place
24 designated as a human trafficking shelter or domestic violence shelter,
25 without the authorization of that victim, human trafficking shelter, or
26 domestic violence shelter is guilty of a Class A misdemeanor. (B) As
27 used in this section:

28 (1) "Domestic violence shelter" means a confidential location,
29 appropriately licensed by the state, that provides emergency housing for
30 victims of sexual assault or spousal abuse, or both, and their families; and

31 (2) "Human trafficking shelter" means a confidential location,
32 licensed by the Department of Human Services, that provides emergency housing
33 for victims of human trafficking.

34
35 16-100-113. Human trafficking victim-caseworker privilege.

36 (a) A victim of human trafficking, whether or not a party to the

1 action, has a privilege to refuse to disclose and to prevent another from
2 disclosing a confidential communication between the victim and a human
3 trafficking caseworker if the privilege is claimed by any of the following
4 persons:

5 (1) The holder of the privilege;

6 (2) A person who is authorized to claim the privilege by the
7 holder of the privilege; or

8 (3)(A) The person who was the human trafficking caseworker at
9 the time of the confidential communication. (B) However,
10 that person may not claim the privilege if there is no holder of the
11 privilege in existence or if he or she is otherwise instructed by a person
12 authorized to permit disclosure.

13 (b) The human trafficking caseworker who received or made a
14 communication subject to the privilege granted by this section shall claim
15 the privilege whenever he or she is present when the communication is sought
16 to be disclosed and he or she is authorized to claim the privilege under this
17 section.

18 (c)(1) A human trafficking caseworker shall inform a victim of human
19 trafficking of any applicable limitations on confidentiality of
20 communications between the victim and the caseworker.

21 (2) This information may be given orally.

22 (d) As used in this section:

23 (1)(A) "Confidential communication" means information
24 transmitted between the victim and the human trafficking caseworker in the
25 course of their relationship and in confidence by a means which, so far as
26 the victim is aware, does not disclose the information to a third party other
27 than those who are present to further the interests of the victim in the
28 consultation or those to whom disclosures are reasonably necessary for the
29 transmission of the information or an accomplishment of the purposes for
30 which the human trafficking caseworker is consulted.

31 (B) "Confidential communication" includes all information
32 regarding the facts and circumstances involving all incidents of human
33 trafficking;

34 (2) "Holder of the privilege" means the victim if he or she does
35 not have a guardian or conservator, or a guardian or conservator of the
36 victim if the victim has a guardian or conservator; and

1 (3) "Human trafficking caseworker" means a person who is
2 employed by any organization, whether financially compensated or not, for the
3 purpose of rendering advice or assistance to victims of human trafficking,
4 and who has received specialized training in the counseling of victims of
5 human trafficking, and who meets one (1) of the following requirements:

6 (A)(i) Holds a master's degree or higher in counseling or
7 a related field; or

8 (ii) Has one (1) year of counseling experience, at
9 least six (6) months of which is in the counseling of victims of human
10 trafficking; or

11 (B)(i) Has at least forty (40) hours of training as
12 specified in this subsection and is supervised by a person who qualifies as a
13 counselor under this subdivision (d)(3) or by a psychotherapist.

14 (ii) The training, supervised by a person qualified
15 under this subdivision (d)(3), includes without limitation the following
16 areas:

17 (a) History of human trafficking;

18 (b) Civil and criminal law as it relates to
19 human trafficking;

20 (c) Societal attitudes toward human
21 trafficking;

22 (d) Peer counseling techniques;

23 (e) Housing, public assistance, and other
24 financial resources available to meet the needs of victims of human
25 trafficking; and

26 (f)(1) Referral services available to victims
27 of human trafficking.

28 (2) A portion of this training includes
29 an explanation of privileged communication.

30
31 SECTION 8. Arkansas Code Title 16, Chapter 118 is amended to add a new
32 section to read as follows:

33 16-118-109. Civil cause of action for victims of human trafficking.

34 (a) For the purposes of this section:

35 (1) "Minor" refers to any natural person less than eighteen (18)
36 years of age; and

1 (2) "Victim of human trafficking" means any person, whether a
2 United States citizen or foreign national, who has been subjected to an
3 offense under this chapter.

4 (b)(1) An individual who is a victim of human trafficking may bring a
5 civil action in any appropriate state court.

6 (2) The court may award actual damages, compensatory damages,
7 punitive damages, injunctive relief, or any other appropriate relief.

8 (3) A prevailing plaintiff shall also be awarded attorney's fees
9 and costs.

10 (4) Treble damages shall be awarded on proof of actual damages
11 where defendant's acts were willful and malicious.

12 (c)(1) Any statute of limitation period imposed for the filing of a
13 civil action under this section will not begin to run until the plaintiff
14 discovers both that the human trafficking incident occurred and that the
15 defendant caused, was responsible for, or profited from the human trafficking
16 incident.

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

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

23 (B) Disability includes without limitation:

24 (i) Insanity;

25 (ii) Imprisonment; or

26 (iii) Other incapacity or incompetence.

27 (4) If the plaintiff's injury is caused by two (2) or more
28 incidents that are part of a human trafficking situation caused by the same
29 defendant, the statute of limitation will not commence running until the last
30 human trafficking incident in the continuing series occurs.

31 (5) 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 these acts
34 occurred will not be part of the statute of limitations for the commencement
35 of this action.

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

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

4 (7)(A) In the discretion of the court, two (2) or more persons
5 may join in one (1) action under this section as plaintiffs if their
6 respective actions involve at least one (1) defendant in common.

7 (B) In the discretion of the court, two (2) or more
8 persons may be joined in one (1) action under this section as defendants if
9 those persons may be liable to at least one (1) plaintiff in common.

10 (8) A person may not avoid liability under this section by any
11 means of any conveyance of any right, title, or interest in real property, or
12 by any indemnification, hold harmless agreement, or similar agreement that
13 purports to show consent of the victim of human trafficking.

14
15 SECTION 9. Arkansas Code Title 16, Chapter 118 is amended to add a new
16 section to read as follows:

17 16-118-110. Civil cause of action for victims of the sex trade.

18 (a) For the purposes of this section:

19 (1) "Minor" refers to a natural person less than eighteen (18)
20 years of age;

21 (2)(A) "Sex act" means any touching of the sexual or other
22 intimate parts of another person for the purpose of gratifying sexual desire
23 of any person.

24 (B) "Sex act" includes touching of the person as well as
25 touching by the person, whether directly or through clothing;

26 (3) "Sex trade" means an act that if proven beyond a reasonable
27 doubt could support a conviction for violation or attempted violation of:

28 (A) An offense under § 5-70-101 et seq., or any attempt,
29 promotion, or solicitation thereof;

30 (B) Obscenity and related crimes, §§ 5-68-201 - 5-68-503;
31 and

32 (C) Any crime involving a minor that is sexual in nature;
33 and

34 (4) "Victim of the sex trade" means a person who has:

35 (A) Been the object of the solicitation for prostitution;

36 (B) Intended or been compelled to engage in an act of

1 prostitution; or

2 (C) In the case of obscenity or child pornography, has
3 appeared in or been described or depicted in the offending conduct or
4 material.

5 (b) A victim of the sex trade has a cause of action against a person
6 or entity who:

7 (1) Recruits, profits from, or maintains the victim in any sex
8 trade act;

9 (2) Intentionally abuses or causes bodily harm to the victim in
10 any sex trade act; or

11 (3) Knowingly advertises or publishes advertisements for
12 purposes of recruitment into sex trade activity.

13 (c) This section does not create liability for any person or entity
14 who provides goods or services to the general public and who also provides
15 those goods or services to persons who would be liable under subsection (b)
16 of this section, absent a showing that the person or entity either knowingly
17 markets or provides its goods or services to, knowingly receives a higher
18 level of compensation from, or supervises or exercises control over, persons
19 or entities liable under subsection (a) of this section.

20 (d)(1) The court may award actual damages, compensatory damages,
21 punitive damages, injunctive relief, or any other appropriate relief.

22 (2) A prevailing plaintiff shall also be awarded attorney's fees
23 and costs.

24 (3) Treble damages shall be awarded on proof of actual damages
25 if a defendant's acts were willful and malicious.

26 (e) It is not a defense to an action brought under this section that:

27 (1) The victim of the sex trade and the defendant had a
28 consenting sexual relationship;

29 (2) The defendant is related to the victim of the sex trade by
30 blood or marriage or has lived with the victim in any formal or informal
31 household arrangement;

32 (3) The victim of the sex trade was paid or otherwise
33 compensated for sex trade activity;

34 (4) The victim of the sex trade engaged in sex trade activity
35 before any involvement with the defendant;

36 (5) The victim of the sex trade continues to engage in sex trade

1 activity following any involvement with the defendant;

2 (6) The victim of the sex trade did not attempt to escape, flee,
3 or otherwise terminate the contact with the defendant;

4 (7) The victim of the sex trade consented to engage in sex trade
5 activity;

6 (8) The victim of the sex trade engaged in only a single
7 incident of sex trade activity;

8 (9) There was no physical contact involved in the sex trade
9 activity;

10 (10) As a condition of employment, the defendant required the
11 victim of the sex trade to agree not to engage in prostitution;

12 (11) The defendant's place of business was posted with signs
13 prohibiting prostitution or prostitution-related activities; or

14 (12) The victim of the sex trade has been convicted or charged
15 with prostitution or prostitution-related offenses.

16 (f)(1) A statute of limitation period imposed for the filing of a
17 civil action under this section will not begin to run until the plaintiff
18 discovers both that the sex trade act occurred and that the defendant caused,
19 was responsible for, or profited from the sex trade act.

20 (2) If the plaintiff is a minor, the limitation period will not
21 commence running until he or she is eighteen (18) years of age.

22 (3)(A) If the plaintiff is under a disability at the time the
23 cause of action accrues so that it is impossible or impracticable for him or
24 her to bring an action, the time of the disability is not counted as part of
25 the time limited for the commencement of the action.

26 (B) Disability includes without limitation insanity,
27 imprisonment, or other incapacity or incompetence.

28 (4) If the plaintiff's injury is caused by two (2) or more acts
29 that are part of a continuing series of sex trade acts by the same defendant,
30 the statute of limitation will not commence running until the last sex trade
31 act in the continuing series occurred.

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

1 (6) A defendant is estopped to assert a defense of the statute
2 of limitations when the expiration of the statute is due to conduct by the
3 defendant inducing the plaintiff to delay the filing of the action or placing
4 the plaintiff under duress.

5 (7)(A) In the discretion of the court, two (2) or more persons
6 may join in one (1) action under this section as plaintiffs if their
7 respective actions involve at least one (1) defendant in common.

8 (B) In the discretion of the court, two (2) or more
9 persons may be joined in one (1) action under this section as defendants if
10 those persons may be liable to at least one (1) plaintiff in common.

11 (8) A person may not avoid liability under this section by any
12 means of any conveyance of any right, title, or interest in real property, or
13 by any indemnification, hold harmless agreement, or similar agreement that
14 purports to show consent of the victim of the sex trade.

15
16
17 Referral requested by: Representative David Meeks

18 Prepared by: BPG/LNS
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