

1 HB133
2 154357-1
3 By Representative Wallace
4 RFD: Judiciary
5 First Read: 14-JAN-14
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8 SYNOPSIS: Existing law provides for the crimes of
9 human trafficking in the first degree and human
10 trafficking in the second degree. Existing law also
11 makes it a crime to obstruct or attempt to
12 interfere or prevent enforcement of Alabama's human
13 trafficking law. Existing law entitles a victim of
14 human trafficking to mandatory restitution and
15 allows the victim to initiate a civil lawsuit to
16 recover damages.

17 This bill would repeal the existing law
18 related to human trafficking and adopt the Uniform
19 Act on Prevention of and Remedies for Human
20 Trafficking in Alabama.

21 This bill would provide for the crime of
22 trafficking an individual, the crime of forced
23 labor, the crime of patronizing a victim of sexual
24 servitude, and the crime of patronizing a minor for
25 commercial sexual activity. This bill would provide
26 that a person that is a business entity could be

1 prosecuted for certain offenses related to human
2 trafficking.

3 This bill would require a person convicted
4 of an offense under the uniform act to pay
5 restitution to the victim. This bill would also
6 authorize forfeiture of certain real and personal
7 property used or intended for use in committing or
8 facilitating an offense under the uniform act.

9 This bill would provide that a prosecution
10 for a crime under the uniform act must commence
11 within 20 years of commission of the offense.

12 This bill would limit the admissibility of
13 evidence regarding the past sexual behavior of the
14 victim.

15 This bill would authorize the victim to
16 bring a civil action against the perpetrator.

17 This bill would create a Council on Human
18 Trafficking and provide for the membership and
19 duties of the council.

20 This bill would require the state Department
21 of Transportation to display human trafficking
22 public awareness signs at certain locations
23 throughout the state. This bill would also require
24 certain employers to display human trafficking
25 awareness signs and would allow the Department of
26 Labor to impose a penalty on employers that do not
27 display the sign.

1 This bill would authorize victims of an
2 offense under the uniform act to be eligible for
3 compensation from the Alabama Crime Victims
4 Compensation Fund.

5 This bill would allow certain victims to
6 apply for an immigration visa.

7 This bill would also provide that the
8 uniform act would be constructed in para materia
9 with existing state law.

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

23 The purpose or effect of this bill would be
24 to require a new or increased expenditure of local
25 funds within the meaning of the amendment. However,
26 the bill does not require approval of a local
27 governmental entity or enactment by a 2/3 vote to

1 become effective because it comes within one of the
2 specified exceptions contained in the amendment.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

7
8 Relating to human trafficking; to enact the Uniform
9 Act on Prevention of and Remedies for Human Trafficking in
10 Alabama; to repeal Articles 8 and 8A of Chapter 6, Title 13A,
11 comprised of Sections 13A-6-150 to 13A-6-160, inclusive, and
12 Section 13A-6-170, respectively, Code of Alabama 1975; and in
13 connection therewith would have as its purpose or effect the
14 requirement of a new or increased expenditure of local funds
15 within the meaning of Amendment 621 of the Constitution of
16 Alabama of 1901, now appearing as Section 111.05 of the
17 Official Recompilation of the Constitution of Alabama of 1901,
18 as amended.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. This act shall be cited as the Uniform
21 Act on Prevention of and Remedies for Human Trafficking.

22 Section 2. For purposes of this act, the following
23 words shall have the following meanings:

24 (1) ADULT. An individual 18 years of age or older.

25 (2) COERCION. Any one of the following:

26 a. The use or threat of force against, abduction of,
27 serious harm to, or physical restraint of an individual.

1 b. The use of a plan, pattern, or statement with
2 intent to cause an individual to believe that failure to
3 perform an act will result in the use of force against,
4 abduction of, serious harm to, or physical restraint of, an
5 individual.

6 c. The abuse or threatened abuse of law or legal
7 process.

8 d. Controlling or threatening to control an
9 individual's access to a controlled substance as defined in
10 Section 20-2-2, Code of Alabama 1975.

11 e. The destruction or taking of or the threatened
12 destruction or taking of an individual's identification
13 document or other property.

14 f. The use of debt bondage.

15 g. The use of an individual's physical or mental
16 impairment when the impairment has a substantial adverse
17 effect on the individual's cognitive or volitional function.

18 h. The commission of civil or criminal fraud.

19 (3) COMMERCIAL SEXUAL ACTIVITY. Sexual activity for
20 which anything of value is given to, promised to, or received,
21 by a person.

22 (4) DEBT BONDAGE. Inducing an individual to provide
23 commercial sexual activity in payment toward or satisfaction
24 of a real or purported debt or labor or services in payment
25 toward or satisfaction of a real or purported debt if:

26 a. the reasonable value of the labor or services is
27 not applied toward the liquidation of the debt; or

1 b. the length of the labor or services is not
2 limited and the nature of the labor or services is not
3 defined.

4 (5) HUMAN TRAFFICKING. The commission of an offense
5 created by Sections 3 through 7.

6 (6) IDENTIFICATION DOCUMENT. A passport, driver's
7 license, immigration document, travel document, or other
8 government-issued identification document, including a
9 document issued by a foreign government.

10 (7) LABOR or SERVICES. Activity having economic
11 value.

12 (8) MINOR. An individual less than 18 years of age.

13 (9) PERSON. An individual, estate, business, or
14 nonprofit entity, or other legal entity. The term does not
15 include a public corporation or government or government
16 subdivision, agency, or instrumentality.

17 (10) SERIOUS HARM. Harm, whether physical or
18 nonphysical, including psychological, economic, or
19 reputational, to an individual which would compel a reasonable
20 individual of the same background and in the same
21 circumstances to perform or continue to perform labor or
22 services or sexual activity to avoid incurring the harm.

23 (11) SEXUAL ACTIVITY. The term includes a sexually
24 explicit performance.

25 (12) STATE. A state of the United States, the
26 District of Columbia, Puerto Rico, the United States Virgin
27 Islands, or any territory or insular possession subject to the

1 jurisdiction of the United States. The term includes an Indian
2 tribe or band recognized by federal law or formally
3 acknowledged by a state.

4 (13) VICTIM. An individual who is subjected to human
5 trafficking or to conduct that would have constituted human
6 trafficking had this act been in effect when the conduct
7 occurred, regardless of whether a perpetrator is identified,
8 apprehended, prosecuted, or convicted.

9 Section 3. (a) A person commits the offense of
10 trafficking an individual if the person knowingly recruits,
11 transports, transfers, harbors, receives, provides, obtains,
12 isolates, maintains, or entices an individual in furtherance
13 of:

14 (1) forced labor in violation of Section 4; or

15 (2) sexual servitude in violation of Section 5.

16 (b) Trafficking an individual who is an adult is a
17 Class B felony.

18 (c) Trafficking an individual who is a minor is a
19 Class A felony.

20 Section 4. (a) A person commits the offense of
21 forced labor if the person knowingly uses coercion to compel
22 an individual to provide labor or services, except when such
23 conduct is permissible under federal law or law of this state
24 other than this act.

25 (b) Forced labor of an individual who is an adult is
26 a Class B felony.

1 (c) Forced labor of an individual who is a minor is
2 a Class A felony.

3 Section 5. (a) A person commits the offense of
4 sexual servitude if the person knowingly does any of the
5 following:

6 (1) Maintains or makes available a minor for the
7 purpose of engaging the minor in commercial sexual activity.

8 (2) Uses coercion or deception to compel an adult to
9 engage in commercial sexual activity.

10 (b) It is not a defense in a prosecution under
11 subsection (a) (1) that the minor consented to engage in
12 commercial sexual activity or that the defendant believed the
13 minor was an adult.

14 (c) Sexual servitude under subsection (a) (1) is a
15 Class B felony.

16 (d) Sexual servitude under subsection (a) (2) is a
17 Class A felony.

18 Section 6. (a) A person commits the offense of
19 patronizing a victim of sexual servitude if the person
20 knowingly gives, agrees to give, or offers to give anything of
21 value so that an individual may engage in commercial sexual
22 activity with another individual and the person knows that the
23 other individual is a victim of sexual servitude.

24 (b) Patronizing a victim of sexual servitude who is
25 an adult is a Class A misdemeanor.

26 (c) Patronizing a victim of sexual servitude who is
27 a minor is a Class C felony.

1 Section 7. (a) A person commits the offense of
2 patronizing a minor for commercial sexual activity if the
3 person does any of the following:

4 (1) With the intent that an individual engage in
5 commercial sexual activity with a minor, the person gives,
6 agrees to give, or offers to give anything of value to a minor
7 or another person so that the individual may engage in
8 commercial sexual activity with a minor.

9 (2) The person gives, agrees to give, or offers to
10 give anything of value to a minor or another person so that an
11 individual may engage in commercial sexual activity with a
12 minor.

13 (b) Patronizing a minor for commercial sexual
14 activity under subsection (a) (1) is a Class B felony.

15 (c) Patronizing a minor for commercial sexual
16 activity under subsection (a) (2) is a Class C felony.

17 Section 8. (a) A person that is a business entity
18 may be prosecuted for an offense under Sections 3 through 7
19 only if any of the following circumstances exist:

20 (1) The entity knowingly engages in conduct that
21 constitutes human trafficking.

22 (2) An employee or non-employee agent of the entity
23 engages in conduct that constitutes human trafficking and the
24 conduct is part of a pattern of activity in violation of this
25 act for the benefit of the entity, which the entity knew was
26 occurring and failed to take effective action to stop.

1 (b) When a person that is a business entity is
2 prosecuted for an offense under Sections 3 through 7, the
3 court may consider the severity of the entity's conduct and
4 order penalties in addition to those otherwise provided for
5 the offense, including all of the following:

6 (1) A fine of not more than one million dollars
7 (\$1,000,000) per offense.

8 (2) Disgorgement of profit from activity in
9 violation of this act.

10 (3) Debarment from state and local government
11 contracts.

12 Section 9. (a) An aggravating circumstance during
13 the commission of an offense under Section 3, 4, or 5 occurs
14 when the defendant recruited, enticed, or obtained the victim
15 of the offense from a shelter that serves individuals
16 subjected to human trafficking, domestic violence, or sexual
17 assault, runaway youth, foster children, or the homeless.

18 (b) If the trier of fact finds that an aggravating
19 circumstance occurred during the commission of an offense
20 under Section 3, 4, or 5, the defendant may be imprisoned for
21 up to five years in addition to the period of imprisonment
22 prescribed for the offense.

23 Section 10. (a) The court shall order the person
24 convicted of an offense under Section 3, 4, or 5 to pay
25 restitution to the victim of the offense for the following:

1 (1) Expenses incurred or reasonably certain to be
2 incurred by the victim as a result of the offense, including
3 reasonable attorney's fees and costs.

4 (2) An amount equal to the greatest of the
5 following, with no reduction for expenses the defendant
6 incurred to maintain the victim:

7 a. The gross income to the defendant for, or the
8 value to the defendant of, the victim's labor or services or
9 sexual activity.

10 b. The amount the defendant contracted to pay the
11 victim.

12 c. The value of the victim's labor or services or
13 sexual activity, calculated under the minimum-wage and
14 overtime provisions of the Fair Labor Standards Act, 29 U.S.C.
15 Section 201 et seq., whichever is higher, even if the
16 provisions do not apply to the victim's labor or services or
17 sexual activity.

18 (b) The court shall order restitution under
19 subsection (a) even if the victim is unavailable to accept
20 payment of restitution.

21 (c) If the victim does not claim restitution ordered
22 under subsection (a) for five years after entry of the order,
23 the restitution must be paid to the Council on Human
24 Trafficking created under Section 19.

25 Section 11. (a) On motion, the court shall order a
26 person convicted of an offense under Section 3, 4, or 5 to
27 forfeit any interest in real or personal property that was

1 used or intended to be used to commit or facilitate the
2 commission of the offense or constitutes proceeds or was
3 derived from proceeds that the person obtained, directly or
4 indirectly, as a result of the offense.

5 (b) In a proceeding against real or personal
6 property under this section, the person convicted of the
7 offense may assert a defense that the forfeiture is manifestly
8 disproportional to the seriousness of the offense. The person
9 has the burden to establish the defense by a preponderance of
10 the evidence.

11 (c) Proceeds from the public sale or auction of
12 property forfeited under subsection (a) shall be remitted to
13 funding the Alabama Crime Victims Compensation Fund.

14 Section 12. A prosecution for an offense under this
15 act shall be commenced not later than 20 years after
16 commission of the offense.

17 Section 13. In an investigation of or a prosecution
18 for an offense under this act, law enforcement officers and
19 prosecuting agencies shall keep confidential the identity,
20 pictures, and images of the alleged victim and the family of
21 the alleged victim, except to the extent that disclosure is
22 necessary for the purpose of investigation or prosecution,
23 required by law or court order, or necessary to ensure
24 provision of services or benefits for the victim or the
25 victim's family.

26 Section 14. In a prosecution for an offense under
27 this act or a civil action under Section 18, evidence of a

1 specific instance of the alleged victim's past sexual behavior
2 or reputation or opinion evidence of past sexual behavior of
3 the alleged victim is not admissible unless the evidence is
4 admitted in accordance with Rule 412 of the Alabama Rules of
5 Evidence or offered by the prosecution to provide a pattern of
6 human trafficking by the defendant.

7 Section 15. (a) An individual is not criminally
8 liable or subject to a juvenile delinquency proceeding for
9 prostitution for any other nonviolent offense if the
10 individual was a minor at the time of the offense and
11 committed the offense as a direct result of being a victim.

12 (b) An individual who has engaged in commercial
13 sexual activity is not criminally liable or subject to a
14 juvenile delinquency proceeding for prostitution if the
15 individual was a minor at the time of the offense.

16 (c) A minor who under subsection (a) or (b) is not
17 subject to criminal liability or a juvenile delinquency
18 proceeding is presumed to be a child in need of supervision
19 under Title 12, Chapter 15 of the Code of Alabama 1975.

20 (d) This section does not apply in a prosecution or
21 a juvenile delinquency proceeding for patronizing a
22 prostitute.

23 Section 16. An individual charged with prostitution
24 or any other nonviolent offense committed as a direct result
25 of being a victim may assert an affirmative defense that the
26 individual is a victim.

1 Section 17. (a) An individual convicted of
2 prostitution or any other nonviolent offense committed as a
3 direct result of being a victim may apply by motion to the
4 court in which the conviction was entered to vacate the
5 conviction and expunge the record of conviction. The court may
6 grant the motion on a finding that the individual's
7 participation in the offense was a direct result of being a
8 victim.

9 (b) No official determination or documentation is
10 required to grant a motion by an individual under subsection
11 (a), but an official determination or documentation from a
12 federal, state, local, or tribal agency that the individual
13 was a victim at the time of the offense creates a presumption
14 that the individual's participation was a direct result of
15 being a victim.

16 Section 18. (a) A victim may bring a civil action
17 against a person that commits an offense against the victim
18 under Section 3, 4, or 5 for compensatory damages, punitive
19 damages, injunctive relief, and any other appropriate relief.

20 (b) If a victim prevails in an action under this
21 section, the court shall award the victim reasonable
22 attorney's fees and costs.

23 (c) An action under this section must be commenced
24 not later than 10 years after the later of the date on which
25 the victim no longer was subject to human trafficking or
26 attained 18 years of age.

1 (d) Damages awarded to a victim under this section
2 for an item must be offset by any restitution paid to the
3 victim pursuant to Section 10 for the same item.

4 (e) This section does not preclude any other remedy
5 available to a victim under federal law or law of this state
6 other than this act.

7 Section 19. (a) The Council on Human Trafficking is
8 created. The Governor shall appoint the chair and members of
9 the council. Members must include representatives of the
10 following:

11 (1) State, local, or tribal agencies that have
12 contact with victims or perpetrators.

13 (2) Nongovernmental organizations that represent,
14 advocate for, or provide services to victims.

15 (3) Other organizations and individuals, including
16 victims, whose expertise would benefit the council.

17 (b) The state agencies represented in the council
18 created under this section shall provide staff to the council.

19 (c) The council created under this section shall
20 meet on a regular basis and do the following:

21 (1) Develop a coordinated and comprehensive plan to
22 provide victims with services.

23 (2) Collect and evaluate data on human trafficking
24 in this state and submit an annual report to the Governor and
25 Legislature.

1 (3) Promote public awareness about human
2 trafficking, victim remedies and services, and trafficking
3 prevention.

4 (4) Create a public-awareness sign that contains the
5 state, local, and National Human Trafficking Resource Center
6 hotline information.

7 (5) Coordinate training on human trafficking
8 prevention and victim services for state and local employees
9 who may have recurring contact with victims or perpetrators.

10 (6) Conduct other appropriate activities.

11 Section 20. (a) The Department of Transportation
12 shall display a public-awareness sign that contains the
13 National Human Trafficking Resource Center hotline information
14 in every transportation station, rest area, and welcome center
15 in the state which is open to the public.

16 (b) An employer shall display the public-awareness
17 sign described in subsection (a) in a place that is clearly
18 conspicuous and visible to employees and the public at each of
19 the following locations in this state at which the employer
20 has employees:

21 (1) A strip club or other sexually oriented
22 business.

23 (2) A business entity found to be a nuisance for
24 prostitution under municipal or local law.

25 (3) A job recruitment center.

26 (4) A hospital.

27 (5) An emergency care provider.

1 (c) The Department of Labor shall impose a fine of
2 three hundred dollars (\$300) per violation on an employer that
3 knowingly fails to comply with subsection (b). The fine is the
4 exclusive remedy for failure to comply.

5 Section 21. (a) A victim is eligible for a benefit
6 or service available through the state and identified in the
7 plan developed under Section 19(c)(1), including compensation
8 under the Alabama Crime Victims Compensation Fund, regardless
9 of immigration status.

10 (b) A minor who has engaged in commercial sexual
11 activity is eligible for a benefit or service available
12 through the state and identified in the plan developed under
13 Section 19(c)(1), regardless of immigration status.

14 (c) As soon as practicable after a first encounter
15 with an individual who reasonably appears to the appropriate
16 state or local agency to be a victim or a minor who has
17 engaged in commercial sexual activity, the agency shall notify
18 the appropriate state or local agency identified in the
19 comprehensive plan developed under Section 19(c)(1) that the
20 individual may be eligible for a benefit or service under the
21 law of this state.

22 Section 22. (a) On request from an individual whom a
23 law enforcement officer reasonably believes is a victim who is
24 or has been subjected to a severe form of trafficking or
25 criminal offense required for the individual to qualify for a
26 non-immigrant T or U visa under 8 U.S.C. §1101(a)(15)(T), as
27 amended, or 8 U.S.C. §1101(a)(15)(U), as amended, or for

1 continued presence under 22 U.S.C. §7105(c)(3), as amended,
2 the law enforcement officer, as soon as practicable after
3 receiving the request, shall complete, sign, and give to the
4 individual the Form I-914B or Form I-918B provided by the
5 United States Citizenship and Immigration Services on its
6 Internet website and ask a federal law enforcement officer to
7 request continued presence.

8 (b) If the law enforcement agency determines that an
9 individual does not meet the requirements for the agency to
10 comply with subsection (a), the agency shall inform the
11 individual of the reason and that the individual may make
12 another request under subsection (a) and submit additional
13 evidence satisfying the requirements.

14 Section 23. (a) To the extent that funds are
15 appropriated for this purpose, the appropriate state agency
16 may make a grant to or contract with a unit of state or local
17 government, Indian tribe, or non-governmental victims service
18 organization to develop or expand service programs for
19 victims.

20 (b) A recipient of a grant or contract under
21 subsection (a) shall report annually to the council created by
22 Section 19 the number and demographic information of all
23 victims receiving services under the grant or contract.

24 Section 24. In applying and construing this uniform
25 act, consideration must be given to the need to promote
26 uniformity of the law with respect to its subject matter among
27 states that enact it.

1 Section 25. Articles 8 and 8A of Chapter 6, Title
2 13A, comprised of Sections 13A-6-150 to 13A-6-160, inclusive,
3 and Section 13A-6-170, respectively, Code of Alabama 1975, are
4 repealed.

5 Section 26. This act shall be construed in para
6 materia with all other state laws which relate to human
7 trafficking.

8 Section 27. Although this bill would have as its
9 purpose or effect the requirement of a new or increased
10 expenditure of local funds, the bill is excluded from further
11 requirements and application under Amendment 621, now
12 appearing as Section 111.05 of the Official Recompilation of
13 the Constitution of Alabama of 1901, as amended, because the
14 bill defines a new crime or amends the definition of an
15 existing crime.

16 Section 28. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.