

1 HB432  
2 120926-3  
3 By Representatives Williams (J), Coleman, Todd, Hilliard,  
4 McClurkin, Ison, Gipson, England, Ball, Allen, Hubbard, Love,  
5 Galliher, Hill, Ward, Canfield, Hall, Moore (P), Drake,  
6 Clouse, McClendon, Mask, Faust and Williams (P)  
7 RFD: Judiciary  
8 First Read: 26-JAN-10

1  
2 ENROLLED, An Act,

3           Relating to human trafficking; to provide that it  
4 would be unlawful for a person, by coercion or deception, to  
5 cause another person to work or perform services having  
6 financial value or require that person to perform certain  
7 sexual activities; to provide penalties; to provide exemptions  
8 to a corporation or other entity if the corporation or other  
9 entity was not aware of the actions of its agents or  
10 employees; and in connection therewith would have as its  
11 purpose or effect the requirement of a new or increased  
12 expenditure of local funds within the meaning of Amendment 621  
13 of the Constitution of Alabama of 1901, now appearing as  
14 Section 111.05 of the Official ReCompilation of the  
15 Constitution of Alabama of 1901, as amended.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17           Section 1. This bill shall be known and may be cited  
18 as the "Representatives Jack Williams and Merika Coleman Act."

19           Section 2. As used in this act, the following terms  
20 shall have the following, or any combination of the following,  
21 meanings ascribed to them by this section:

22           (1) COERCION. Any of the following:

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

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

5               b. Implementing any scheme, plan, or pattern  
6       intended to cause a person to believe that failure to perform  
7       an act would result in physical injury, mental suffering, or  
8       physical restraint of any person.

9               c. Destroying, concealing, removing, confiscating,  
10       or withholding from the person or another person, or  
11       threatening to destroy, conceal, remove, confiscate, or  
12       withhold from the person or another person, the person's or  
13       any person's actual or purported government records,  
14       immigration documents, identifying information, or personal or  
15       real property.

16              d. Exposing or threatening to expose any fact or  
17       information that if revealed would tend to subject a person to  
18       criminal prosecution, criminal or immigration proceedings,  
19       hatred, contempt, or ridicule.

20              e. Threatening to report the person or another  
21       person to immigration officials or to other law enforcement  
22       officials or otherwise blackmailing or extorting the person or  
23       another person.

1           f. Controlling a person's access to a controlled  
2 substance, as the term is defined in Section 20-2-2, Code of  
3 Alabama 1975.

4           g. Rape or sodomy or threatened rape or sodomy of  
5 any person, as defined by Title 13A, Code of Alabama 1975.

6           (2) DECEPTION. Any of the following:

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

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

20           c. Promising benefits or the performance of services  
21 which the accused does not intend to be delivered. Evidence of  
22 failure to deliver benefits or perform services standing alone  
23 shall not be sufficient to authorize a conviction under this  
24 act.

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

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

9           (4) MENTAL SUFFERING. A high degree of mental pain  
10 or emotional disturbances, such as distress, anxiety, public  
11 humiliation, or psychosomatic physical symptoms. It is more  
12 than mere disappointment, anger, resentment, wounded pride, or  
13 embarrassment and must be a direct result of the crime of  
14 human trafficking.

15           (5) MINOR. A person under the age of 18.

16           (6) PHYSICAL INJURY. Impairment of physical  
17 condition or substantial pain.

18           (7) SEXUAL SERVITUDE. Any of the following:

19           a. Any sexual conduct as defined in subdivision (3)  
20 of Section 14-11-30, Code of Alabama 1975, for which anything  
21 of value is directly or indirectly given, promised to, or  
22 received by any person, which conduct is induced or obtained  
23 by coercion or deception from a person.

24           b. Sexual conduct includes:

1           1. Sexually explicit performances, meaning an act or  
2 show intended to arouse, satisfy the sexual desires of, or  
3 appeal to the prurient interests of patrons or viewers,  
4 whether public or private, live, photographed, recorded,  
5 videotaped, or projected over the Internet.

6           2. Commercial sex acts, meaning any sex act on  
7 account of which anything of value is given, promised to, or  
8 received, directly or indirectly, by any person.

9           3. Acts defined in subdivision (3) of Section  
10 14-11-30, Code of Alabama 1975.

11           (8) TRAFFICKING VICTIM. Any person, including  
12 minors, subjected to labor servitude, sexual servitude, or  
13 involuntary servitude.

14           Section 3. (a) A person commits the crime of human  
15 trafficking in the first degree if:

16           (1) He or she knowingly subjects another person to  
17 labor servitude or sexual servitude through use of coercion or  
18 deception.

19           (2) He or she knowingly obtains, recruits, entices,  
20 solicits, induces, threatens, isolates, harbors, holds,  
21 restrains, transports, provides, or maintains any minor for  
22 the purpose of causing a minor to engage in sexual servitude.

23           (3) For purposes of this section, it is not required  
24 that the defendant have knowledge of a minor victim's age, nor

1 is reasonable mistake of age a defense to liability under this  
2 provision.

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

14 (5) Any person who obstructs, or attempts to  
15 obstruct, or in any way interferes with or prevents the  
16 enforcement of this section shall be guilty of a Class C  
17 felony.

18 (b) Human trafficking in the first degree is a Class  
19 A felony.

20 Section 4. (a) A person commits the crime of human  
21 trafficking in the second degree if:

22 (1) A person knowingly benefits, financially or by  
23 receiving anything of value, from participation in a venture  
24 or engagement for the purpose of sexual servitude or labor  
25 servitude.

1           (2) A person knowingly recruits, entices, solicits,  
2 induces, harbors, transports, holds, restrains, provides,  
3 maintains, subjects, or obtains by any means another person  
4 for the purpose of labor servitude or sexual servitude.

5           (3) A corporation, or any other legal entity other  
6 than an individual, may be prosecuted for human trafficking in  
7 the second degree for an act or omission only if an agent of  
8 the corporation or entity performs the conduct which is an  
9 element of the crime while acting within the scope of his or  
10 her office or employment and on behalf of the corporation or  
11 entity, and the commission of the crime was either authorized,  
12 requested, commanded, performed, or within the scope of the  
13 person's employment on behalf of the corporation or entity or  
14 constituted a pattern of conduct that an agent of the  
15 corporation or entity knew or should have known was occurring.

16           (4) Any person who obstructs, or attempts to  
17 obstruct, or in any way interferes with or prevents the  
18 enforcement of this section shall be guilty of a Class A  
19 misdemeanor.

20           (b) Human trafficking in the second degree is a  
21 Class B felony.

22           Section 5. Evidence of the following facts or  
23 conditions shall not constitute a defense in a prosecution for  
24 human trafficking in the first or second degree, nor shall the  
25 evidence preclude a finding of a violation:



1           (1) A human trafficking victim's sexual history or  
2 history of commercial sexual activity.

3           (2) A human trafficking victim's connection by blood  
4 or marriage to a defendant in the case or to anyone involved  
5 in the victim's trafficking.

6           (3) Consent of or permission by a victim of human  
7 trafficking or anyone else on the victim's behalf to any  
8 commercial sex act or sexually explicit performance.

9           (4) Age of consent to sex, an act defined by  
10 paragraph b. of subdivision (7) of Section 1 of the definition  
11 for sexual servitude, legal age of marriage, or other  
12 discretionary age.

13           (5) Mistake as to the human trafficking victim's  
14 age, even if the mistake is reasonable.

15           Section 6. (a) A person or entity convicted of any  
16 violation of this act shall be ordered to pay mandatory  
17 restitution to the victim, prosecutorial or law enforcement  
18 entity, with the proceeds from property forfeited under  
19 Section 6 applied first to payment of restitution. Restitution  
20 under this section shall include items covered under Article  
21 4A, commencing with Section 15-18-65 of Chapter 18 of Title 15  
22 of the Code of Alabama 1975, and any of the following:

23           (1) Costs of medical and psychological treatment,  
24 including physical and occupational therapy and  
25 rehabilitation, at the court's discretion.

1           (2) Costs of necessary transportation, temporary  
2 housing, and child care, at the court's discretion.

3           (3) Cost of the investigation and prosecution,  
4 attorney's fees, and other court-related costs such as victim  
5 advocate fees.

6           (4) The greater of a. the value of the human  
7 trafficking victim's labor as guaranteed under the minimum  
8 wage and overtime provisions of the Fair Labor Standards Act  
9 (FLSA); or b. the gross income or value to the defendant of  
10 the victim's labor servitude or sexual servitude engaged in by  
11 the victim while in the human trafficking situation.

12           (5) Return of property, cost of damage to property,  
13 or full value of property if destroyed or damaged beyond  
14 repair.

15           (6) Expenses incurred by a victim and any household  
16 members or other family members in relocating away from the  
17 defendant or his or her associates, including, but not limited  
18 to, deposits for utilities and telephone service, deposits for  
19 rental housing, temporary lodging and food expenses, clothing,  
20 and personal items. Expenses incurred pursuant to this section  
21 shall be verified by law enforcement to be necessary for the  
22 personal safety of the victim or household or family members,  
23 or by a mental health treatment provider to be necessary for  
24 the emotional well-being of the victim.

1           (7) Any and all other losses suffered by the victim  
 2 as a result of any violation of this act.

3           (b) For purposes of this section, the return of the  
 4 victim to his or her home country or other absence of the  
 5 victim from the jurisdiction shall not prevent the victim from  
 6 receiving restitution.

7           Section 7. A person who commits the offense of human  
 8 trafficking in the first degree or human trafficking in the  
 9 second degree shall forfeit to the State of Alabama any  
 10 profits or proceeds and any interest in property that he or  
 11 she has acquired or maintained that the sentencing court  
 12 determines to have been acquired or maintained as a result of  
 13 committing human trafficking in the first degree or human  
 14 trafficking in the second degree. Any assets seized shall  
 15 first be used to pay restitution to trafficking victims and  
 16 subsequently to pay any damages awarded to victims in a civil  
 17 action. Any remaining assets shall go toward the cost of the  
 18 investigation and prosecution and the remaining assets shall  
 19 be remitted to funding the Alabama Crime Victims Compensation  
 20 Fund.

21           Section 8. An individual who is a victim of human  
 22 trafficking may bring a civil action in the appropriate state  
 23 court. The court may award actual damages, compensatory  
 24 damages, punitive damages, injunctive relief, and any other  
 25 appropriate relief. A prevailing plaintiff shall also be

1 awarded attorney's fees and costs. Treble damages shall be  
 2 awarded on proof of actual damages where defendant's acts were  
 3 willful and malicious.

4 Section 9. (a) (1) An action for an offense defined  
 5 by this act where the victim is not a minor shall be brought  
 6 within five years from the date the victim was removed or  
 7 escaped from the human trafficking situation.

8 (2) Any statute of limitations that would otherwise  
 9 preclude prosecution for an offense involving the trafficking  
 10 of a minor, or the physical or sexual abuse of a minor, shall  
 11 be tolled until such time as the victim has reached the age of  
 12 18 years.

13 (3) The running of the statute of limitations shall  
 14 be suspended where a person entitled to bring a claim of an  
 15 offense defined by this act could not have reasonably  
 16 discovered the crime due to circumstances resulting from the  
 17 human trafficking situation, such as psychological trauma,  
 18 cultural and linguistic isolation, and the inability to access  
 19 services.

20 (b) Any statute of limitation period imposed for the  
 21 filing of a civil action under this act will not begin to run  
 22 until the plaintiff discovers both that the sex trade act  
 23 occurred and that the defendant caused, was responsible for,  
 24 or profited from the sex trade act.

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

4           (2) If the plaintiff is under a disability at the  
5 time the cause of action accrues, so that it is impossible or  
6 impractical for him or her to bring an action, then the time  
7 of the disability is not part of the time limited for the  
8 commencement of the action. Disability includes, but is not  
9 limited to, insanity, imprisonment, or other incapacity or  
10 incompetence.

11           (3) If the plaintiff's injury is caused by two or  
12 more acts that are part of a continuing series of sex trade  
13 acts by the same defendant, then the limitation period will  
14 not commence running until the last sex trade act in the  
15 continuing series occurs.

16           (4) If the plaintiff is subject to threats,  
17 intimidation, manipulation, or fraud perpetrated by the  
18 defendant or by any person acting in the interest of the  
19 defendant, then the time when these acts occur will not be  
20 part of the time limited for the commencement of this action.

21           Section 10. In a prosecution for prostitution, or a  
22 sexually explicit performance defined in this act, of a human  
23 trafficking victim for the victim's illegal acts engaged in or  
24 performed as a result of labor servitude or sexual servitude,

1 it shall be an affirmative defense that the person was a  
2 victim of human trafficking.

3 Section 11. (a) District attorneys and the Attorney  
4 General shall have concurrent authority to prosecute any  
5 criminal cases arising under this act and to perform any duty  
6 that necessarily appertains to this section.

7 (b) Each violation under this act shall constitute a  
8 separate offense.

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

17 Section 13. This act shall become effective on the  
18 first day of the third month following its passage and  
19 approval by the Governor, or its otherwise becoming law.

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\_\_\_\_\_  
Speaker of the House of Representatives

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President and Presiding Officer of the Senate

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House of Representatives

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I hereby certify that the within Act originated in  
9 and was passed by the House 04-MAR-10, as amended.

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Greg Pappas  
Clerk

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15

Senate

\_\_\_\_\_  
22-APR-10

Amended and Passed

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House

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22-APR-10

Concurred in Sen-  
ate Amendment

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