

1 SB354
2 116107-2
3 By Senator French
4 RFD: Judiciary
5 First Read: 02-FEB-10

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8 SYNOPSIS: Under existing law, there is no express
9 provision that makes it unlawful for a person, by
10 coercion or deception, to cause another person to
11 work or perform services having financial value or
12 require that person to perform certain sexual
13 activities.

14 This bill would make it unlawful for a
15 person, by coercion or deception, to cause another
16 person to work or perform services having financial
17 value or require that person to perform certain
18 sexual activities.

19 This bill would provide penalties.

20 This bill would exempt a corporation unless
21 the corporation either authorized, requested,
22 commanded, performed, or committed the offense of
23 human trafficking on behalf of the corporation or
24 engaged in a pattern of human trafficking that an
25 agent of the company knew or should have known was
26 occurring.

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

14 The purpose or effect of this bill would be
15 to require a new or increased expenditure of local
16 funds within the meaning of the amendment. However,
17 the bill does not require approval of a local
18 governmental entity or enactment by a 2/3 vote to
19 become effective because it comes within one of the
20 specified exceptions contained in the amendment.

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 Relating to human trafficking; to provide that it
27 would be unlawful for a person, by coercion or deception, to

1 cause another person to work or perform services having
2 financial value or require that person to perform certain
3 sexual activities; to provide penalties; to provide exemptions
4 to a corporation if the corporation was not aware of the
5 actions of its agents or employees; and in connection
6 therewith would have as its purpose or effect the requirement
7 of a new or increased expenditure of local funds within the
8 meaning of Amendment 621 of the Constitution of Alabama of
9 1901, now appearing as Section 111.05 of the Official
10 Recompilation of the Constitution of Alabama of 1901, as
11 amended.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. As used in this act, the following terms
14 shall have the following, or any combination of the following,
15 meanings ascribed to them by this section:

16 (1) COERCION. Any of the following:

17 a. Causing or threatening to cause serious harm to
18 any person, physically restraining or confining any person, or
19 threatening to physically restrain or confine any person or
20 otherwise causing the person performing or providing labor or
21 services to believe that the person or another person will
22 suffer serious harm.

23 b. Implementing any scheme, plan, or pattern
24 intended to cause a person to believe that failure to perform
25 an act would result in serious harm to or physical restraint
26 of any person.

1 c. Destroying, concealing, removing, confiscating,
2 or withholding from the person or another person, or
3 threatening to destroy, conceal, remove, confiscate, or
4 withhold from the person or another person, the person's or
5 any person's actual or purported government records,
6 immigration documents, identifying information, or personal or
7 real property.

8 d. Exposing or threatening to expose any fact or
9 information that if revealed would tend to subject a person to
10 criminal prosecution, criminal or immigration proceedings,
11 hatred, contempt, or ridicule.

12 e. Threatening to report the person or another
13 person to immigration officials or to other law enforcement
14 officials or otherwise blackmailing or extorting the person or
15 another person.

16 f. Facilitating or controlling a victim's access to
17 a controlled substance, as the term is defined in Section
18 20-2-2, Code of Alabama 1975.

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

21 (2) DECEPTION. Any of the following:

22 a. Creating or confirming an impression of any
23 existing fact or past event which is false and which the
24 accused knows or believes to be false.

25 b. Exerting financial control over the person or
26 another person by placing the person or another person under
27 the actor's control as a security or payment of a debt to the

1 extent that, if the value of those services as reasonably
2 assessed is not applied toward the liquidation of the debt or
3 the length and nature of those services are not respectively
4 limited and defined, the principal amount of the debt does not
5 reasonably reflect the value of the items or services for
6 which the debt was incurred, or preventing a person from
7 acquiring information pertinent to the disposition of the
8 debt.

9 c. Promising benefits or the performance of services
10 which the accused does not intend to deliver or perform or
11 knows will not be delivered or performed. Evidence of failure
12 to deliver benefits or perform services standing alone shall
13 not be sufficient to authorize a conviction under this
14 section.

15 d. Using any scheme, plan, or pattern, whether overt
16 or subtle, intended to cause any person to believe that, if
17 the person did not perform such labor, services, acts, or
18 performances, that person or another person would suffer
19 serious harm or restraint.

20 (3) HUMAN TRAFFICKING. Engaging in labor or sexual
21 servitude of another person.

22 (4) LABOR SERVITUDE. Work or service of economic or
23 financial value which is performed or provided by another
24 person and is induced or obtained by coercion or deception.

25 (5) SEXUAL SERVITUDE. Any of the following:

26 a. Any sexual conduct as defined in subdivision (3)
27 of Section 14-11-30, Code of Alabama 1975, for which anything

1 of value is directly or indirectly given, promised to, or
2 received by any person, which conduct is induced or obtained
3 by coercion or deception or which conduct is induced or
4 obtained from a person.

5 b. Sexual conduct includes, sexually explicit
6 performances, meaning an act or show, intended to arouse,
7 satisfy the sexual desires of, or appeal to the prurient
8 interests of patrons or viewers, whether public or private,
9 live, photographed, recorded, videotaped, or projected over
10 the Internet, and commercial sex acts, meaning any sex act on
11 account of which anything of value is given, promised to, or
12 received, directly or indirectly, by any person.

13 (6) TRAFFICKING VICTIM. Any person, including
14 minors, subjected to labor servitude, sexual servitude, or
15 involuntary servitude.

16 Section 2. (a) A person commits the crime of human
17 trafficking in the first degree if:

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

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

25 (3) For purposes of Section 2, it is not required
26 that the defendant have knowledge of the victim's age, nor is

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

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

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

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

19 Section 3. (a) A person commits the crime of human
20 trafficking in the second degree if:

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

25 (2) He or she recruits, entices, solicits, induces,
26 harbors, transports, holds, restrains, provides, maintains,

1 subjects, or obtains by any means another person for the
2 purpose of labor servitude or sexual servitude.

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

14 (4) 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 misdemeanor.

18 (b) Human trafficking in the second degree is a
19 Class B felony, except that if the victim is under the age of
20 18 years, the term of imprisonment may not be less than 10
21 years.

22 Section 4. 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:

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

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

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

7 (4) Age of consent to sex, an act defined by
8 paragraph b. of subdivision (5) of Section 1 of the definition
9 for sexual servitude, legal age of marriage, or other
10 discretionary age.

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

13 Section 5. (a) A person or entity convicted of
14 violations of this act shall be ordered to pay mandatory
15 restitution to the victim promptly upon the conviction of the
16 defendant, with the proceeds from property forfeited under
17 this subsection applied first to payment of restitution.

18 (1) Costs of medical and psychological treatment,
19 including physical and occupational therapy and
20 rehabilitation, at the court's discretion.

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

23 (3) Attorney's fees and other court-related costs
24 such as victim advocate fees.

25 (4) The greater of (i) the value of the human
26 trafficking victim's labor as guaranteed under the minimum
27 wage and overtime provisions of the Fair Labor Standards Act

1 (FLSA); or (ii) the gross income or value to the defendant of
2 the victim's labor servitude or sexual servitude engaged in by
3 the victim while in the human trafficking situation.

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

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

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

19 (8) Repatriation of the victim to his or her home
20 country.

21 (9) Any and all other losses suffered by the victim
22 as a result of violations of this act.

23 (b) For purposes of this section, the return of the
24 victim to his or her home country or other absence of the
25 victim from the jurisdiction shall not prevent the victim from
26 receiving restitution.

1 Section 6. A person who commits the offense of human
2 trafficking in the first degree or human trafficking in the
3 second degree shall forfeit to the State of Alabama any
4 profits or proceeds and any interest in property that he or
5 she has acquired or maintained that the sentencing court
6 determines to have been acquired or maintained as a result of
7 committing human trafficking in the first degree or human
8 trafficking in the second degree shall qualify as offenses for
9 forfeiture. Any assets seized shall first be used to pay
10 restitution to trafficking victims and subsequently to pay any
11 damages awarded to victims in a civil action. Any remaining
12 assets shall go toward funding the Alabama Crime Victim's
13 Compensation Fund.

14 Section 7. (a) An individual who is a victim of
15 human trafficking may bring a civil action in the appropriate
16 state court. The court may award actual damages, compensatory
17 damages, punitive damages, injunctive relief, and any other
18 appropriate relief. A prevailing plaintiff shall also be
19 awarded attorney's fees and costs. Treble damages shall be
20 awarded on proof of actual damages where defendant's acts were
21 willful and malicious.

22 (b) If a person entitled to sue is under a
23 disability at the time the cause of action accrues, so that it
24 is impossible or impracticable for him or her to bring an
25 action, then the time of the disability is not part of the
26 time limited for the commencement of the action. Disability

1 includes, but is not limited to, insanity, imprisonment, or
2 other incapacity or incompetence.

3 (c) A defendant is estopped from asserting a defense
4 of the statute of limitations when the expiration of the
5 statute is due to conduct by the defendant inducing the
6 plaintiff to delay the filing of the action or placing the
7 plaintiff under duress.

8 Section 8. An action for human trafficking in the
9 first degree or human trafficking in the second degree shall
10 be without a statute of limitations.

11 Section 9. In any prosecution of a human trafficking
12 victim for the victim's illegal acts engaged in or performed
13 as a result of labor servitude or sexual servitude, it shall
14 be an affirmative defense that the person was a victim of
15 human trafficking. A victim of human trafficking is not
16 criminally liable for any illegal acts engaged in or performed
17 as a result of labor servitude or sexual servitude committed
18 as a direct result of, incident to, or related to, being
19 subjected to human trafficking.

20 Section 10. (a) Prosecuting attorneys and the
21 Attorney General shall have concurrent authority to prosecute
22 any criminal cases arising under this act and to perform any
23 duty that necessarily appertains to this section.

24 (b) Each violation under this act shall constitute a
25 separate offense.

26 Section 11. Although this bill would have as its
27 purpose or effect the requirement of a new or increased

1 expenditure of local funds, the bill is excluded from further
2 requirements and application under Amendment 621, now
3 appearing as Section 111.05 of the Official ReCompilation of
4 the Constitution of Alabama of 1901, as amended, because the
5 bill defines a new crime or amends the definition of an
6 existing crime.

7 Section 12. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.