

1 SB372  
2 117743-1  
3 By Senators Mitchell, Barron, Little (Z), Butler, Preuitt,  
4 Dixon, Waggoner, Mitchem, Pittman, Marsh, Orr, Figures, Little  
5 (T), Holley, Benefield, Dunn, Beason, Smith, Sanford, Brooks,  
6 Erwin, Glover, Ross, Singleton, Poole, Means and Keahey  
7 RFD: Governmental Affairs  
8 First Read: 04-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 physical injury  
18 or mental suffering, to any person, physically restraining or  
19 confining any person, or threatening to physically restrain or  
20 confine any person or otherwise causing the person performing  
21 or providing labor or services to believe that the person or  
22 another person will suffer physical injury or mental  
23 suffering.

24 b. Implementing any scheme, plan, or pattern  
25 intended to cause a person to believe that failure to perform  
26 an act would result in physical injury, mental suffering, or  
27 physical restraint 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 medical treatment or to a controlled substance, as the term is  
18 defined in Section 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 physical injury or mental suffering.

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 threat, coercion, or  
25 deception.

26 (5) MENTAL SUFFERING. A high degree of mental pain,  
27 emotional disturbances, such as distress, anxiety, public

1 humiliation, or psychosomatic physical symptoms. It is more  
2 than mere disappointment, anger, resentment, wounded pride, or  
3 embarrassment and must be a direct result of the coercion and  
4 deception of being a victim of human trafficking.

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

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

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

13 b. Sexual conduct includes, sexually explicit  
14 performances, meaning an act or show, intended to arouse,  
15 satisfy the sexual desires of, or appeal to the prurient  
16 interests of patrons or viewers, whether public or private,  
17 live, photographed, recorded, videotaped, or projected over  
18 the Internet, and commercial sex acts, meaning any sex act on  
19 account of which anything of value is given, promised to, or  
20 received, directly or indirectly, by any person.

21 (8) TRAFFICKING VICTIM. Any person, including  
22 minors, subjected to labor servitude, sexual servitude, or  
23 involuntary servitude.

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

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

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

8           (3) For purposes of Section 2, it is not required  
9 that the defendant have knowledge of the victim's age, nor is  
10 reasonable mistake of age a defense to liability under this  
11 provision.

12           (4) A corporation may be prosecuted for human  
13 trafficking in the first degree for an act or omission only if  
14 an agent of the corporation performs the conduct which is an  
15 element of the crime while acting within the scope of his or  
16 her office or employment and on behalf of the corporation, and  
17 the commission of the crime was either authorized, requested,  
18 commanded, performed, or within the scope of the person's  
19 employment on behalf of the corporation or constituted a  
20 pattern of conduct that an agent of the company knew or should  
21 have known was occurring.

22           (5) Any person who obstructs, or attempts to  
23 obstruct, or in any way interferes with or prevents the  
24 enforcement of this section, shall be guilty of a Class C  
25 felony.

26           (b) Human trafficking in the first degree is a Class  
27 A felony.



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

3           (1) He or she knowingly benefits, financially or by  
4 receiving anything of value, from participation in a venture  
5 or engagement for the purpose of sexual servitude or labor  
6 servitude.

7           (2) He or she recruits, entices, solicits, induces,  
8 harbors, transports, holds, restrains, provides, maintains,  
9 subjects, or obtains by any means another person for the  
10 purpose of labor servitude or sexual servitude.

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

22           (4) Any person who obstructs, or attempts to  
23 obstruct, or in any way interferes with or prevents the  
24 enforcement of this section, shall be guilty of a Class A  
25 misdemeanor.

26           (b) Human trafficking in the second degree is a  
27 Class B felony, except that if the victim is under the age of

1 18 years, the term of imprisonment may not be less than 10  
2 years.

3 Section 4. Evidence of the following facts or  
4 conditions shall not constitute a defense in a prosecution for  
5 human trafficking in the first or second degree, nor shall the  
6 evidence preclude a finding of a violation:

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

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

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

15 (4) Age of consent to sex, an act defined by  
16 paragraph b. of subdivision (5) of Section 1 of the definition  
17 for sexual servitude, legal age of marriage, or other  
18 discretionary age.

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

21 Section 5. (a) A person or entity convicted of  
22 violations of this act shall be ordered to pay mandatory  
23 restitution to the victim promptly upon the conviction of the  
24 defendant, with the proceeds from property forfeited under  
25 Section 6 applied first to payment of restitution.

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

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

6 (3) Costs of the investigation and prosecution,  
7 attorney's fees, and other court-related costs such as victim  
8 advocate fees.

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

15 (5) Return of property, cost of damage to property,  
16 or full value of property if destroyed or damaged beyond  
17 repair.

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

1           (7) Any and all other losses suffered by the victim  
2 as a result of violations 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 6. 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 7. 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  
26 awarded attorney's fees and costs. Treble damages shall be

1 awarded on proof of actual damages where defendant's acts were  
2 willful and malicious.

3 Section 8. Any civil action or criminal prosecution  
4 for human trafficking in the first degree or human trafficking  
5 in the second degree shall be without a statute of  
6 limitations.

7 Section 9. In a prosecution for prostitution of a  
8 human trafficking victim for the victim's illegal acts engaged  
9 in or performed as a result of labor servitude or sexual  
10 servitude, it shall be an affirmative defense that the person  
11 was a victim of human trafficking.

12 Section 10. (a) District attorneys and the Attorney  
13 General shall have concurrent authority to prosecute any  
14 criminal cases arising under this act and to perform any duty  
15 that necessarily appertains to this section.

16 (b) Each violation under this act shall constitute a  
17 separate offense.

18 Section 11. Although this bill would have as its  
19 purpose or effect the requirement of a new or increased  
20 expenditure of local funds, the bill is excluded from further  
21 requirements and application under Amendment 621, now  
22 appearing as Section 111.05 of the Official Recompilation of  
23 the Constitution of Alabama of 1901, as amended, because the  
24 bill defines a new crime or amends the definition of an  
25 existing crime.

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