COMMITTEE REPORT

March 28, 2012

**H. 3757**

Introduced by Reps. Hardwick, Hearn, Mitchell, Long, Erickson, Brady, Butler Garrick, Funderburk, Munnerlyn, Knight, Dillard, Cobb‑Hunter, Parks, Huggins, Allison, Tallon, Brannon, Atwater, Whipper, Patrick and J.R. Smith

S. Printed 3/28/12--H.

Read the first time February 24, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3757) to amend the Code of Laws of South Carolina, 1976, by adding Article 19 to Chapter 3, Title 16 so as to define necessary terms, provide for certain human, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all before and after the enacting words and inserting:

/ SECTION 1. Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Article 19

Trafficking in Persons

Section 16‑3‑2010. (A) As used in this article:

(1) ‘Business’ means a corporation, partnership, proprietorship, firm, enterprise, franchise, organization, or self‑employed individual.

(2) ‘Charitable organization’ means a ‘charitable organization’ pursuant to section 33‑56‑20.

(3) ‘Debt bondage’ means the status or condition of a debtor arising from a pledge by the debtor of his personal services or those of a person under his control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined or if the principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.

(4) ‘Forced labor’ means any type of labor or services performed or provided by a person rendered through another person’s coercion of the person providing the labor or services.

This definition does not include labor or services performed or provided by a person in the custody of the Department of Corrections or a local jail, detention center, or correctional facility.

(5) ‘Involuntary servitude’ means a condition of servitude induced through coercion.

(6) ‘Person’ means an individual, corporation, partnership, charitable organization, or another legal entity.

(7) ‘Sex trafficking’ means the recruitment, harboring, transportation, provision, or obtaining of a person for one of the following when it is induced by force, fraud, or coercion or the person forced to perform the act is under the age of eighteen years and anything of value is given, promised to, or received, directly or indirectly, by another person:

(a) criminal sexual conduct pursuant to section 16‑3‑651;

(b) criminal sexual conduct in the first degree pursuant to section 16‑3‑652;

(c) criminal sexual conduct in the second degree pursuant to section 16‑3‑653;

(d) criminal sexual conduct in the third degree pursuant to section 16‑3‑654;

(e) criminal sexual conduct with a minor pursuant to section 16‑3‑655;

(f) engaging a child for sexual performance pursuant to section 16‑3‑810;

(g) performance pursuant to section 16‑3‑800;

(h) producing, directing or promoting sexual performance by a child pursuant to section 16‑3‑820;

(i) sexual battery pursuant to section 16‑3‑661;

(j) sexual conduct pursuant to section 16‑3‑800; or

(k) sexual performance pursuant to section 16‑3‑800.

(8) ‘Services’ means an act committed at the behest of, under the supervision of, or for the benefit of another person.

(9) ‘Trafficking in persons’ means when a victim is subjected to or a person attempts to subject a victim to sex trafficking; forced labor or services; involuntary servitude; or debt bondage by employing one of the following:

(a) physically restraining or threatening to physically restrain another person;

(b) knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or other immigration document, or another actual or purported government identification document, of the victim;

(c) extortion or blackmail;

(d) causing or threatening to cause financial harm to the victim;

(e) facilitating or controlling a victim’s access to a controlled substance; or

(f) coercion.

(10) ‘Victim of trafficking in persons’ or ‘victim’ means a person who has been subjected to the crime of trafficking in persons.

Section 16‑3‑2020. (A) A person who recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, knowing that the victim will be subjected to sex trafficking, forced labor or services, involuntary servitude or debt bondage through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of trafficking in persons.

(B) A person who recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, for the purposes sex trafficking, forced labor or services, involuntary servitude or debt bondage through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in subsection (A), is guilty of trafficking in persons.

(C) For a first offense, the person is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(D) For a second offense, the person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(E) For a third or subsequent offense, the person is guilty of a felony and upon conviction, must be imprisoned not more than forty‑five years.

(F) If the victim of an offense contained in this section is under the age of eighteen, an additional term of fifteen years may be imposed in addition and must be consecutive to the penalty prescribed for a violation of this section.

(G) A person who aids, abets, or conspires with another person to violate the criminal provisions of this section must be punished in the same manner as provided for the principal offender and is considered a trafficker.

(H) A business owner who uses his business in a way that participates in a violation of this article, upon conviction, must be imprisoned for not more than ten years in addition to the penalties provided in this section for each violation.

(I) A plea of guilty or the legal equivalent entered pursuant to a provision of this article by an offender entitles the victim of trafficking in persons to all benefits, rights, and compensation granted pursuant to Section 16‑3‑1110.

(J) In a prosecution of a person who is a victim of trafficking in persons, it is an affirmative defense that he was under duress or coerced into committing the offenses for which he is subject to prosecution, if the offenses were committed as a direct result of, or incidental or related to, trafficking.

(K) Evidence of the following facts or conditions do not constitute a defense in a prosecution for a violation of this article, nor does the evidence preclude a finding of a violation:

(1) the victim’s sexual history or history of commercial sexual activity, the specific instances of the victim’s sexual conduct, opinion evidence of the victim’s sexual conduct, and reputation evidence of the victim’s sexual conduct;

(2) the victim’s connection by blood or marriage to a defendant in the case or to anyone involved in the victim’s trafficking;

(3) the implied or express consent of a victim to acts which violate the provisions of this section do not constitute a defense to violations of this section;

(4) age of consent to sex, legal age of marriage, or other discretionary age; and

(5) mistake as to the victim’s age, even if the mistake is reasonable.

(L) A person who violates the provisions of this section may be prosecuted by the State Grand Jury pursuant to section 14‑7‑1600 when a victim is trafficked in more than one county or a trafficker commits the offense of trafficking in persons in more than one county.

Section 16‑3‑2030. (A) The principal owners of a business, a business entity, including a corporation, partnership, charitable organization, or another legal entity, that knowingly aids or participates in an offense provided in this article is criminally liable for the offense and will be subject to a fine or loss of business license in the State, or both.

(B) If the principal owners of a business entity are convicted of violating a section of this article, the court or Secretary of State, when appropriate, may:

(1) order its dissolution or reorganization;

(2) order the suspension or revocation of any license, permit, or prior approval granted to it by a state or local government agency; or

(3) order the surrender of its charter if it is organized under state law or the revocation of its certificate to conduct business in the State if it is not organized under state law.

Section 16‑3‑2040. (A) An offender convicted of a violation of this article must be ordered to pay mandatory restitution to the victim as provided in this section.

(B) If the victim of trafficking dies as a result of being trafficked, a surviving spouse of the victim is eligible for restitution. If no surviving spouse exists, restitution must be paid to the victim’s issue or their descendants per stirpes. If no surviving spouse or issue or descendants exist, restitution must be paid to the victim’s estate. A person named in this subsection may not receive funds from restitution if he benefited or engaged in conduct described in this article.

(C) If a person is unable to pay restitution at the time of sentencing, or at any other time, the court may set restitution pursuant to section 16‑3‑1270.

(D) Restitution for this section, pursuant to Section 16‑3‑1270, means payment for all injuries, specific losses, and expenses sustained by a crime victim resulting from an offender’s criminal conduct pursuant to section 16‑3‑1110 (12)(a).

(E) Notwithstanding another provision of law, the applicable statute of limitations for a victim of trafficking in persons is pursuant to section 16‑3‑1110 12(a).

(F) Restitution must be paid to the victim promptly upon the conviction of the defendant. The return of the victim to his home country or other absence of the victim from the jurisdiction does not prevent the victim from receiving restitution.

Section 16‑3‑2050. (A) The Attorney General shall establish an interagency task force to develop and implement a State Plan for the Prevention of Trafficking in Persons. The task force shall meet at least quarterly and should include all aspects of trafficking in persons, including sex trafficking and labor trafficking of both United States citizens and foreign nationals, as defined in Section 16‑3‑2010. The Attorney General also shall collect and publish relevant data to this section on their website.

(B) The task force shall consist of, at a minimum, representatives from:

(1) the Office of the Attorney General, who must be Chair;

(2) the South Carolina Labor, Licensing and Regulation;

(3) the South Carolina Police Chiefs Association;

(4) the South Carolina Sheriffs’ Association;

(5) the State Law Enforcement Division;

(6) the Department of Health and Environmental Control Board;

(7) the United States Department of Labor;

(8) the State Office of Victim Assistance;

(9) the South Carolina Commission on Prosecution Coordination;

(10) the Department of Social Services;

(11) a representative from the Governor’s office

(12) a representative from the Employment Security Commission; and

(13) two persons appointed by the Attorney General from nongovernmental organizations, especially those specializing in trafficking in persons, those representing diverse communities disproportionately affected by trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of trafficking in persons.

(C) The Attorney General shall invite representatives of the United States Attorneys’ offices and of federal law enforcement agencies’ offices within the State, including the Federal Bureau of Investigations and the United States Immigration and Customs Enforcement office, to be members of the task force.

(D) The task force shall carry out the following activities either directly or through one or more of its constituent agencies:

(1) develop the state plan within eighteen months of the effective date of this act;

(2) coordinate the implementation of the state plan; and

(3) starting one year after the formation after the task force, submit an annual report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before December thirty‑first of each calendar year.

(E) The task force shall consider carrying out the following activities either directly or through one or more of its constituent agencies:

(1) coordinate the collection and sharing of trafficking data among government agencies, which data collection must respect the privacy of victims of trafficking in persons;

(2) coordinate the sharing of information between agencies for the purposes of detecting criminal groups engaged in trafficking in persons;

(3) explore the establishment of state policies for time limits for the issuance of Law Enforcement Agency (LEA) endorsements as described in C.F.R. Chapter 8, Section 214.11(f)(1);

(4) establish policies to enable state government to work with nongovernmental organizations and other elements of civil society to prevent trafficking in persons and provide assistance to United States citizens and foreign national victims;

(5) review the existing services and facilities to meet trafficking victims’ needs and recommend a system to coordinate services including, but not limited to, health services, including mental health, housing, education and job training, English as a second language classes, interpreting services, legal and immigration services, and victim compensation;

(6) evaluate various approaches used by state and local governments to increase public awareness of the trafficking in persons, including United States citizens and foreign national victims of trafficking in persons;

(7) mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in persons;

(8) collect and periodically publish statistical data on trafficking, that must be posted on the Attorney General’s website;

(9) prepare public awareness programs designed to educate potential victims of trafficking in persons and their families on the risks of victimization. These public awareness programs must include, but are not limited to:

(a) information about the risks of becoming a victim, including information about common recruitment techniques, use of debt bondage, and other coercive tactics, risk of maltreatment, rape, exposure to HIV or AIDS and other sexually transmitted diseases, and psychological harm related to victimization in trafficking cases;

(b) information about the risks of engaging in commercial sex and possible punishment;

(c) information about victims’ rights in the State;

(d) methods for reporting suspected recruitment activities; and

(e) information on hotlines and available victims’ services; and

(10) preparation and dissemination of awareness materials to the general public to educate the public on the extent of trafficking in persons, both United States citizens and foreign nationals, within the United States and to discourage the demand that fosters the exploitation of persons that leads to trafficking in persons.

(a) The general public awareness materials may include information on the impact of trafficking on individual victims, whether United States citizens or foreign nationals, aggregate information on trafficking in persons worldwide and domestically, and warnings of the criminal consequences of engaging in trafficking in persons. These materials may include pamphlets, brochures, posters, advertisements in mass media, and other appropriate media. All materials must be designed to communicate to the target population.

(b) Materials described in this section may include information on the impact of trafficking in persons on individual victims. However, information on the experiences of individual victims must preserve the privacy of the victim and the victim’s family.

(c) All public awareness programs must be evaluated periodically by the task force to ensure their effectiveness.

Section 16‑3‑2060. (A) A person who is a victim of trafficking in persons may bring a civil action in the court of common pleas. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and other appropriate relief. A prevailing plaintiff also must be awarded attorney’s fees and costs. Treble damages must be awarded on proof of actual damages when the defendant’s acts were wilful and malicious.

(B) Pursuant to Section 16‑3‑1110, the applicable statute of limitations for a crime victim who has a cause of action against an incarcerated offender is tolled and does not expire until three years after the offender’s sentence is completed, including probation and parole, or three years after release from commitment pursuant to Chapter 48, Title 44, whichever is later. However, this provision does not shorten any other tolling period of the statute of limitations which may exist for the victim.

(C) The statute of limitations for the filing of a civil suit does not begin to run until a minor victim has reached the age of majority.

(D) If a victim entitled to sue is under a disability at the time the cause of action accrues, so that it is impossible or impractical for him to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.

(E) The running of the statute of limitations may be suspended when a victim could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

(F) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the victim to delay the filing of the action or placing the victim under duress.

Section 16‑3‑2070. (A) Victims of trafficking in persons pursuant to this article are considered victims for purposes of the Victims’ Bill of Rights and are entitled to all appropriate forms of compensation available pursuant to the State Crime Victim’s Compensation Fund in accordance with the provisions of Article 13, Chapter 3, Title 16. Victims of trafficking in persons pursuant to this article also are entitled to the rights provided in Article 15, Chapter 3, Title 16.

(B) In addition to the provisions of subsection (A), in a prosecution for violations of the criminal provisions of this article, the identity of the victim and the victim’s family must be kept confidential by ensuring that names and identifying information of the victim and victim’s family are not released to the public, including by the defendant.

(C) Pursuant to Section 16‑3‑1240, it is unlawful, except for purposes directly connected with the administration of the victim’s compensation fund, for any person to solicit, disclose, receive, or make use of or authorize, knowingly permit, participate in or acquiesce in the use of any list, or names of, or information concerning persons applying for or receiving awards without the written consent of the applicant or recipient. The records, papers, files, and communications of the board, its panel and the director and his staff must be regarded as confidential information and privileged and not subject to disclosure under the Freedom of Information Act as contained in Chapter 3, Title 30.

Section 16‑3‑2080. (A) For purposes of this section:

(1) ‘Domestic violence shelter’ means a facility whose purpose is to serve as a shelter to receive and house persons who are victims of criminal domestic violence and that provides services as a shelter.

(2) ‘Trafficking shelter’ means a confidential location which provides emergency housing for victims of trafficking in persons.

(3) ‘Grounds’ means the real property of the parcel of land upon which a domestic violence or trafficking shelter or a domestic violence or trafficking shelter’s administrative offices are located, whether fenced or unfenced.

(B) A person who maliciously or with criminal negligence publishes, disseminates, or otherwise discloses the location of a trafficking victim, a trafficking shelter, a domestic violence shelter, or another place designated as a trafficking shelter or domestic violence shelter, without the authorization of that trafficking victim, trafficking shelter, or domestic violence shelter, is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years.

(C) It is unlawful for a person who has been charged with or convicted of a violation of Section 16‑3‑2020 to enter or remain upon the grounds or structure of a domestic violence or trafficking shelter in which the victim resides or the domestic violence shelter’s administrative offices or the trafficking shelter’s administrative offices.

(D) The domestic violence shelter and trafficking shelter must post signs at conspicuous places on the grounds of the domestic violence shelter, trafficking shelter, the domestic violence shelter’s administrative offices, and the trafficking shelter’s administrative offices which, at a minimum, must read substantially as follows: ‘NO TRESPASSING – VIOLATORS WILL BE SUBJECT TO CRIMINAL PENALTIES’.

(E) This section does not apply if the person has legitimate business or any authorization, license, or invitation to enter or remain upon the grounds or structure of the domestic violence or trafficking shelter or the domestic violence or trafficking shelter’s administrative offices.

(F) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years, or both. If the person is in possession of a dangerous weapon at the time of the violation, the person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.”

SECTION 2. Section 16‑3‑930 of the 1976 Code is repealed.

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect one hundred eighty days after approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 19 TO CHAPTER 3, TITLE 16 SO AS TO DEFINE NECESSARY TERMS, PROVIDE FOR CERTAIN HUMAN TRAFFICKING OFFENSES AND PROVIDE PENALTIES, TO PROVIDE FOR CRIMINAL LIABILITY OF BUSINESS ENTITIES, TO PROVIDE RESTITUTION FOR VICTIMS OF HUMAN TRAFFICKING OFFENSES, TO ESTABLISH AN INTERAGENCY TASK FORCE TO DEVELOP AND IMPLEMENT A PLAN FOR THE PREVENTION OF TRAFFICKING IN PERSONS, TO REQUIRE THE COLLECTION AND DISSEMINATION OF DATA RELATED TO HUMAN TRAFFICKING BY THE STATE LAW ENFORCEMENT DIVISION (SLED), TO REQUIRE MANDATORY LAW ENFORCEMENT TRAINING ON HUMAN TRAFFICKING OFFENSES, TO PROVIDE FOR THE CREATION OF PUBLIC AWARENESS PROGRAMS REGARDING HUMAN TRAFFICKING IN THE STATE, TO ALLOW CIVIL ACTIONS BY VICTIMS OF HUMAN TRAFFICKING, TO PROVIDE THAT CERTAIN STANDARDS OF WORKING CONDITIONS APPLY WITHOUT REGARD TO IMMIGRATION STATUS, TO PROVIDE CERTAIN PROTECTIONS FOR VICTIMS OF HUMAN TRAFFICKING PURSUANT TO THE VICTIMS’ BILL OF RIGHTS AND OTHER RELEVANT STATUTORY PROVISIONS, TO REQUIRE THE STATE TO DEVELOP PLANS FOR HOUSING AND COUNSELING, AMONG OTHER THINGS, OF VICTIMS OF HUMAN TRAFFICKING WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THE ACT, TO PROVIDE FOR CERTAIN RIGHTS OF MINOR VICTIMS OF HUMAN TRAFFICKING, TO ESTABLISH HUMAN TRAFFICKING VICTIM‑CASEWORKER PRIVILEGE, AND TO CREATE THE OFFENSE OF MALICIOUSLY OR WITH CRIMINAL NEGLIGENCE PUBLISHING, DISSEMINATING, OR OTHERWISE DISCLOSING THE LOCATION OF A HUMAN TRAFFICKING VICTIM, A TRAFFICKING SHELTER, OR A DOMESTIC VIOLENCE SHELTER AND TO PROVIDE A PENALTY; AND TO REPEAL SECTION 16‑3‑930 RELATING TO TRAFFICKING IN PERSONS FOR FORCED LABOR OR SERVICES.

Whereas, an estimated twenty‑seven million people are currently enslaved around the world; and

Whereas, the United States State Department estimates that between 14,000 and 17,000 people are trafficked into our borders each year; and

Whereas, crimes of this nature have occurred in Myrtle Beach, Charleston, Columbia, and Greenville, South Carolina; and

Whereas, it is our responsibility to protect our people, combat crime, and promote legislation that can enable this behavior throughout our State. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Article 19

Human Trafficking

Section 16‑3‑2010. As used in this article:

(1) ‘Commercial sex act’ means a sex act for which anything of value is given, promised to, or received, directly or indirectly, by another person.

(2) ‘Debt coercion’ means exploitation of the status or condition of a debtor arising from a pledge by the debtor of his personal services or those of a person under his control as a security or payment for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or if the principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.

(3) ‘Labor’ means work of economic or financial value.

(4) ‘Minor’ refers to a natural person under eighteen years of age.

(5) ‘Person’ includes an individual, corporation, partnership, association, a government body, municipal corporation, or another legal entity.

(6) ‘Services’ means an act committed at the behest of, under the supervision of, or for the benefit of another person.

(7) ‘Sex act’ means touching of the sexual or other intimate parts of another person for the purpose of gratifying sexual desire of another person. It includes touching of the person as well as touching by the person, whether directly or through clothing.

(8) ‘Sexually explicit performance’ means an act or show, intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, or videotaped.

(9) ‘Victim of trafficking in persons’ means a person, whether a United States citizen or foreign national, who has been subjected to the crime of trafficking in persons, sexual servitude of a minor, or involuntary servitude.

Section 16‑3‑2020. (A) A person who knowingly recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, another person knowing that the person will be subjected to sexual servitude of a minor or involuntary servitude or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of a felony and, upon conviction, is subject to forfeiture of all assets obtained from the violation of this section and must be imprisoned not more than fifteen years.

(B) A person who knowingly recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a minor for the purposes of a commercial sex act or sexually explicit performance through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in subsection (A), is guilty of a felony and, upon conviction, is subject to forfeiture of all assets obtained from the violation of this section and must be imprisoned not more than twenty years.

(C) A person who knowingly subjects, or attempts to subject, another person to:

(1) a commercial sex act or sexually explicit performance; or

(2) labor or services through use of any of the following means:

(a) causing or threatening to cause serious harm to any person;

(b) physically restraining or threatening to physically restrain another person;

(c) abusing or threatening to abuse the law or legal process;

(d) knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or other immigration document, or another actual or purported government identification document, of another person;

(e) extortion or blackmail;

(f) deception or fraud;

(g) debt coercion;

(h) causing or threatening to cause financial harm to another person;

(i) facilitating or controlling a victim’s access to an addictive controlled substance; or

(j) using any scheme, plan, or pattern, whether overt or subtle, intended to cause a person to believe that if the person did not perform the labor, services, acts or performances, that person or another person would suffer serious harm or physical restraint, is guilty of a felony and, upon conviction, is subject to forfeiture of all assets obtained from the violation of this section and must be imprisoned not more than ten years.

(D) A person who knowingly aids, abets, or conspires with another person to violate the criminal provisions of this section must be punished in the same manner as provided for the principal offender.

(E) A plea of guilty entered under a provision of this article by an offender entitles the victim of trafficking in persons to all benefits, rights, and compensation granted pursuant to state law.

(F) In a prosecution of a person who is a victim of trafficking in persons, it is an affirmative defense that he or she was under duress or coerced into committing the offenses for which he or she is being subject to prosecution. A victim of trafficking in persons is not criminally liable for any commercial sex act or illegal sexually explicit performance committed as a direct result of, or incident or related to, being trafficked.

(G) Evidence of the following facts or conditions do not constitute a defense in a prosecution for violations of this article, nor shall the evidence preclude a finding of a violation:

(1) the trafficking victim’s sexual history or history of commercial sexual activity;

(2) the trafficking victim’s connection by blood or marriage to a defendant in the case or to anyone involved in the victim’s trafficking;

(3) consent of, or permission by, a trafficking victim or anyone else on the trafficking victim’s behalf to a commercial sex act or sexually explicit performance;

(4) age of consent to sex, legal age of marriage, or other discretionary age; and

(5) mistake as to the victim’s age, even if the mistake is reasonable.

Section 16‑3‑2030. (A) A business entity, including a corporation, partnership, association, government body, municipal corporation or another legal entity, that aids or participates in an offense provided in Section 16‑3‑2020 is criminally liable for the offense and will be subject to a fine or loss of business license in the State, or both.

(B) If a business entity is convicted of violating a section of this article, the court, when appropriate, may:

(1) order its dissolution or reorganization;

(2) order the suspension or revocation of any license, permit, or prior approval granted to it by a state or local government agency; or

(3) order the surrender of its charter if it is organized under State law or the revocation of its certificate to conduct business in the State if it is not organized under State law.

Section 16‑3‑2040. (A) A person convicted of a violation of this article must be ordered to pay mandatory restitution to the victim as provided in subsection (C).

(B) For restitution purposes alone, ‘victim’ means a victim of trafficking in persons. If the victim of trafficking dies as a result of being trafficked, a surviving spouse of the victim of trafficking is eligible for restitution. If no surviving spouse exists, restitution must be paid to the victim’s issue or their descendants per stirpes. If no surviving spouse, issue or descendants exist, restitution must be paid to the victim’s estate. A person named in this provision may not receive funds from restitution if he benefited or engaged in conduct described in this article.

(C) Restitution pursuant to this section includes items covered by Article 3, Chapter 13, Title 16 in addition to:

(1) costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court’s discretion;

(2) costs of necessary transportation, temporary housing, and childcare, at the court’s discretion;

(3) attorney’s fees and other court‑related costs such as victim advocate fees;

(4) the greater of:

( i) the gross income or value to the defendant of the trafficking victim’s commercial sex acts or sexually explicit performances, or labor or services;

(ii) the value of the trafficking victim’s labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA); or

(iii) the value of the trafficking victim’s labor as guaranteed under the minimum wage and overtime provisions of state labor law.

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

(6) compensation for emotional distress, pain, and suffering;

(7) expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his associates including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section must be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well‑being of the victim; and

(8) any and all other losses suffered by the victim as a result of violations of this article.

(D) Restitution must be paid to the victim promptly upon the conviction of the defendant, with the proceeds from property forfeited under this subsection applied first to payment of restitution. The return of the victim to his home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving restitution.

(E) Nonpayment or delay in payment of restitution must be governed by the Director of the Victim’s Compensation Fund.

(F) All offenses pursuant to this article qualify as offenses for forfeiture and are subject to the provisions as provided by law. Overseas assets of persons convicted of trafficking in persons also are subject to forfeiture to the extent they can be retrieved by the government. Assets seized first must be used to pay restitution to trafficking victims and subsequently to pay damages awarded to victims in a civil action. Remaining assets go toward funding services for victims of trafficking, the law enforcement task force, and other funding needs as required by this article.

Section 16‑3‑2050. (A) The Governor shall establish an interagency task force to develop and implement a State Plan for the Prevention of Trafficking in Persons. The task force shall meet at least annually and should include all aspects of trafficking, including sex trafficking and labor trafficking of both United States citizens and foreign nationals.

(B) ‘Trafficking’ as used in this section refers to the crimes defined in Section 16‑3‑2020.

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

(1) Office of the Attorney General;

(2) the Employment Security Commission;

(3) the Police Chiefs Association;

(4) the State Sheriffs Association;

(5) the State Law Enforcement Division;

(6) local law enforcement entities;

(7) the Department of Health and Environmental Services;

(8) the Department of Social Services; and

(9) persons from nongovernmental organizations, especially those specializing in trafficking in persons, those representing diverse communities disproportionately affected by trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of human trafficking.

(D) The Governor shall invite representatives of the United States Attorneys’ offices and of federal law enforcement agencies’ offices within the State, including the Federal Bureau of Investigations and the United States Immigration and Customs Enforcement office, to be members of the task force.

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

(1) develop the state plan;

(2) coordinate the implementation of the state plan;

(3) coordinate the collection and sharing of trafficking data among government agencies, which data collection must respect the privacy of victims of trafficking in persons;

(4) coordinate the sharing of information between agencies for the purposes of detecting criminal groups engaged in trafficking;

(5) explore the establishment of state policies for time limits for the issuance of Law Enforcement Agency (LEA) endorsements as described in Section 214.11(f)(1) of Chapter 8 of the Code of Federal Regulations;

(6) establish policies to enable state government to work with nongovernmental organizations and other elements of civil society to prevent trafficking and provide assistance to United States citizens and foreign national victims;

(7) review the existing services and facilities to meet trafficking victims’ needs and recommend a system that would coordinate services including, but not limited to, health services, including mental health, housing, education and job training, English as a second language classes, interpreting services, legal and immigration services, and victim compensation;

(8) evaluate various approaches used by state and local governments to increase public awareness of the trafficking in persons, including United States citizens and foreign national victims of trafficking in persons; and

(9) submit an annual report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before December thirty-first of each calendar year.

Section 16‑3‑2060. (A) The State Law Enforcement Division (SLED), in cooperation with other appropriate authorities, shall collect and periodically publish statistical data on trafficking.

(B) SLED shall elicit the cooperation and assistance of other government agencies, nongovernmental organizations, and other elements of civil society as appropriate to assist in the data collection required pursuant to this section.

(C) The appropriate authorities in each agency that play a vital role in addressing trafficking shall make their best effort to collect information relevant to tracking progress on trafficking including, but not limited to:

(1) numbers of investigations, arrests, prosecutions, and successful convictions of traffickers and those committing trafficking‑related crimes (prostitution, child pornography, visa fraud, document fraud, and other crimes related to trafficking);

(2) the estimated number and demographic characteristics of persons engaged in violations of the criminal provisions defined in this article as well as persons who purchase or receive commercial sex acts or sexually explicit performances, or labor or services, performed by victims of trafficking in persons;

(3) statistics on the number of victims, including nationality, age, method of recruitment, and city, state, and country of origin;

(4) trafficking routes and patterns (states or countries of origin, transit states or countries, and destination states or countries);

(5) methods of transportation (car, boat, plane, foot), if transportation took place; and

(6) social and economic factors that contribute to and foster the demand for all forms of exploitation of persons that lead to trafficking.

Section 16‑3‑2070. (A) SLED shall provide mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in persons.

(B) Training shall focus on:

(1) the new crimes and other provisions created by this article;

(2) methods used in identifying United States citizens and foreign national victims of trafficking in persons, including preliminary interview techniques and appropriate questioning methods;

(3) methods for prosecuting traffickers;

(4) methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a trafficking case;

(5) methods for protecting the rights of victims, taking into account the need to consider human rights and special needs of women and minor victims, and that victims should be treated as victims rather than criminals; and

(6) methods for promoting the safety of victims.

(C) SLED shall seek the input and participation of appropriate nongovernmental organizations and other relevant organizations in the preparation and presentation of training required by this section.

Section 16‑3‑2080. (A) SLED, in cooperation with appropriate nongovernmental organizations, shall prepare public awareness programs designed to educate potential victims of trafficking in persons and their families on the risks of victimization. These public awareness programs must include, but are not be limited to:

(1) information about the risks of becoming a victim, including information about common recruitment techniques, use of debt bondage, and other coercive tactics, risk of maltreatment, rape, exposure to HIV/AIDS and other sexually transmitted diseases, and psychological harm related to victimization in trafficking cases;

(2) information about the risks of engaging in commercial sex and possible punishment;

(3) information about victims’ rights in the State;

(4) methods for reporting suspected recruitment activities; and

(5) information on hotlines and available victims’ services.

(B) The State in cooperation with other appropriate government agencies and appropriate nongovernmental organizations or other elements of civil society shall prepare and disseminate general public awareness materials to educate the public on the extent of trafficking in persons, both United States citizens and foreign nationals, within the United States; and to discourage the demand that fosters the exploitation of persons that leads to trafficking.

(C) General public awareness materials may include information on the impact of trafficking on individual victims, whether United States citizens or foreign nationals; aggregate information on trafficking worldwide and domestically; and warnings of the criminal consequences of engaging in trafficking. These materials may include pamphlets, brochures, posters, advertisements in mass media, and other appropriate media.

(D) Materials described in this section may include information on the impact of trafficking on individual victims. However, information on the experiences of individual victims must preserve the privacy of the victim and the victim’s family.

(E) All public awareness programs must be evaluated periodically to ensure their effectiveness.

(F) Subject to the availability of appropriations, SLED shall make grants to units of local government, Indian tribes, and nonprofit, nongovernmental victims’ service organizations to develop, expand, or strengthen victim service programs for victims of trafficking in persons, whether United States citizens or foreign nationals; to carry out the purposes of prevention of trafficking; and to carry out the purposes of victim protection.

(G) For each state initiative for the prevention of trafficking including, but not limited to, those listed above, SLED shall seek out and enlist the cooperation and assistance of nongovernmental organizations, especially those specializing in trafficking in persons, those representing diverse communities disproportionately affected by trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of trafficking.

Section 16‑3‑2090. (A) A person who is a victim of trafficking may bring a civil action in the court of common pleas. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and other appropriate relief. A prevailing plaintiff also must be awarded attorney’s fees and costs. Treble damages must be awarded on proof of actual damages when the defendant’s acts were wilful and malicious.

(B) A statute of limitation imposed for the filing of a civil suit does not start to run until the minor plaintiff has reached the age of majority.

(C) If a person entitled to sue is under a disability at the time the cause of action accrues, so that it is impossible or impractical for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.

(D) The running of the statute of limitations may be suspended where a person entitled to sue could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

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

Section 16‑3‑2100. (A) Standards for working conditions provided by law apply equally to persons with or without the legal right to work in the United States.

(B) The State shall investigate complaints of unlawful working conditions without regard to the immigration status of complainants and without regard to the nature of the work or services involved.

Section 16‑3‑2110. Investigative, prosecutorial, and other appropriate authorities shall interview all persons arrested on charges of prostitution and take all other steps necessary to identify victims of trafficking in persons, including United States citizens and foreign nationals. Once victims are identified, these authorities shall provide reasonable protection to victims of trafficking in persons to prevent recapture by the traffickers and their associates, secure the victim and the victim’s family from threats, reprisals or intimidation by the traffickers and their associates, and ensure the victim has an opportunity to consult with a victim advocate or other appropriate person to develop a safety plan.

Section 16‑3‑2120. (A) Victims of trafficking in persons pursuant to this article are considered victims for purposes of the Victims’ Bill of Rights and are entitled to all appropriate forms of compensation available pursuant to the State Crime Victim’s Compensation Fund in accordance with the provisions of Article 13, Chapter 3, Title 16. Victims of trafficking in persons pursuant to this article also are entitled to avail themselves of the rights provided in Article 15, Chapter 3, Title 16.

(B) In addition to the provisions of subsection (A), in a prosecution for violations of the criminal provisions of this article, the identity of the victim and the victim’s family must be kept confidential by ensuring that names and identifying information of the victim and victim’s family are not released to the public, including by the defendant.

Section 16‑3‑2130. (A) Within one hundred eighty days of the effective date of this article, the State shall develop plans, in consultation with nongovernmental organizations and other elements of civil society, for the provision of appropriate services, from governmental and nongovernmental sources, for victims of trafficking in persons, whether United States citizens or foreign nationals, and dependents accompanying the victims, or parents or guardians of minor victims including, but not limited to:

(1) appropriate housing, taking into account the person’s status as a victim of crime and including safe conditions for sleeping, food, and personal hygiene;

(2) psychological counseling in a language the victim can understand;

(3) medical assistance in a language the victim can understand;

(4) childcare;

(5) other material assistance as appropriate;

(6) employment, educational, language, and training opportunities; and

(7) legal assistance in a language the victim understands.

(B) Foreign national victims of trafficking in persons and their accompanying dependent children are entitled to receive social benefits in the same manner as refugees.

(C) Whenever possible, victims of trafficking in persons will not be given shelter in prisons or other detention facilities for accused or convicted criminals. Child victims of trafficking in persons will not be housed in prisons or other detention facilities for accused or convicted criminals or juvenile delinquents under any circumstances.

(D) Residence in shelters or other facilities established pursuant to this section is voluntary and victims may decline to stay in shelters or other facilities.

(E) Victims in shelters or other facilities have the option to communicate with and receive visits from family, friends, attorneys, and advocates.

(F) The governmental service providers described in subsection (A) shall take into account the age, gender, and special needs of victims and accompanying dependent children in formulating plans to provide services to them and in delivering such services.

(G) Plans developed in accordance with subsection (A) must be submitted for approval to appropriate state authorities, which also shall undertake periodic reviews of the plans and their implementation to ensure compliance with the requirements of this article and to ensure that all victims are treated with respect for their human rights and dignity.

Section 16‑3‑2140. The provisions of this article must be provided to trafficking victims who are minors in a manner that is in the minor’s best interests and appropriate to their situation. Minor trafficking victims must be provided with appropriate services, which may include an explanation of their rights, privacy, housing, care, and age‑appropriate support and rights pursuant to state law. Special programs must be developed to accommodate minor witnesses including, but not limited to:

(1) testimony of a minor conducted outside of a court setting or by video;

(2) all testimony and court proceedings take place with parent, legal guardian, or foster parent present, if it is in the best interest of the minor;

(3) when safe and possible, minors should be reunited with family members, whether within or outside the United States;

(4) special mental and physical medical care tailored to the minor’s needs; and

(5) upon resettlement in a new country, minor victims of trafficking in persons should be guaranteed education that matches or exceeds the general standard of education in the country.

Section 16‑3‑2150. (A) A trafficking victim, whether or not a party to the action, has the privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a human trafficking caseworker if the privilege is claimed by any of the following persons:

(1) the holder of the privilege;

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

(3) the person who was the human trafficking caseworker at the time of the confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure. The human trafficking caseworker who received or made a communication subject to the privilege granted by this article shall claim the privilege when he is present when the communication is sought to be disclosed, and he is authorized to claim the privilege pursuant to this section.

(B) A human trafficking caseworker shall inform a trafficking victim of applicable limitations on confidentiality of communications between the victim and the caseworker. This information may be given orally.

(C) As used in this article, ‘human trafficking caseworker’ means a person who is employed by an organization whether financially compensated or not, for the purpose of rendering advice or assistance to victims of human trafficking, who has received specialized training in the counseling of victims of trafficking in persons, and who meets one of the following requirements:

(1) holds a master’s degree or higher in counseling or a related field or has one year of counseling experience, at least six months of which is in the counseling of victims of trafficking in persons; or

(2) has at least forty hours of training as specified in this section and is supervised by a person who qualifies as a counselor pursuant to item (1), or by a psychotherapist. The training, supervised by a person qualified pursuant to item (1), shall include, but is not be limited to, the following areas:

(a) history of human trafficking;

(b) civil and criminal law as it relates to human trafficking;

(c) societal attitudes towards human trafficking;

(d) peer counseling techniques;

(e) housing;

(f) public assistance and other financial resources available to meet the financial needs of trafficking victims; and

(g) referral services available to trafficking victims.

A portion of this training must include an explanation of privileged communication.

(D) As used in this article, ‘confidential communication’ means information transmitted between the victim and the caseworker in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the human trafficking counselor is consulted. It includes all information regarding the facts and circumstances involving all incidences of human trafficking.

(E) As used in this article, ‘holder of the privilege’ means the victim when he has no guardian or conservator, or a guardian or conservator of the victim when the victim has a guardian or conservator.

Section 16‑3‑2160. (A) A person who maliciously or with criminal negligence publishes, disseminates, or otherwise discloses the location of a trafficking victim, a trafficking shelter, a domestic violence shelter, or another place designated as a trafficking shelter or domestic violence shelter, without the authorization of that trafficking victim, trafficking shelter, or domestic violence shelter, is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years.

(B) For purposes of this section:

(1) ‘Domestic violence shelter’ means a facility whose purpose is to serve as a shelter to receive and house persons who are victims of criminal domestic violence and that provides services as a shelter.

(2) ‘Trafficking shelter’ means a confidential location which provides emergency housing for victims of human trafficking.”

SECTION 2. Section 16‑3‑930 of the 1976 Code is repealed.

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect upon approval by the Governor.

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