~~Indicates Matter Stricken~~

Indicates New Matter

RECALLED

March 26, 2015

**S. 183**

Introduced by Senators Hayes and Bryant

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Read the first time January 13, 2015.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY AMENDING SECTION 16‑3‑2010, RELATING TO HUMAN TRAFFICKING DEFINITIONS, SO AS TO DEFINE “COERCION”; BY AMENDING SECTION 16‑3‑2020, RELATING TO HUMAN TRAFFICKING OFFENSES, SO AS TO PROVIDE THAT A PERSON IS CONSIDERED A TRAFFICKER IF THE PERSON SOLICITS OR PARTICIPATES IN PROSTITUTION WITH ANOTHER PERSON KNOWING THAT THE OTHER PERSON IS A HUMAN TRAFFICKING VICTIM, TO PROVIDE THAT A VICTIM CONVICTED OF A HUMAN TRAFFICKING VIOLATION OR PROSTITUTION MAY MOTION THE COURT TO VACATE THE CONVICTION, AND TO PROVIDE THAT A VICTIM IS NOT SUBJECT TO PROSECUTION FOR HUMAN TRAFFICKING OR PROSTITUTION IF THE VICTIM WAS A MINOR AT THE TIME OF THE OFFENSE, AND TO PROVIDE THAT A VICTIM’S SEXUAL HISTORY IS NOT ADMISSIBLE BY A DEFENDANT IN A CRIMINAL ACTION; BY AMENDING SECTION 16‑3‑2030, RELATING TO BUSINESSES AND HUMAN TRAFFICKING, SO AS TO PROVIDE THAT A COURT MAY CONSIDER DISGORGEMENT OF PROFIT FROM A BUSINESS INVOLVED IN HUMAN TRAFFICKING AND DISBARMENT FROM GOVERNMENT CONTRACTS; BY AMENDING SECTION 16‑3‑2040, RELATING TO HUMAN TRAFFICKING RESTITUTION, SO AS TO PROVIDE THAT THE COURT MAY ORDER AN AMOUNT REPRESENTING THE VALUE OF THE VICTIM’S LABOR OR SERVICES; BY AMENDING SECTION 16‑3‑2050, RELATING TO THE HUMAN TRAFFICKING TASK FORCE, SO AS TO PROVIDE THAT THE TASK FORCE MAY MAKE GRANTS OR CONTRACTS TO DEVELOP OR EXPAND VICTIM SERVICE PROGRAMS; BY AMENDING SECTION 16‑3‑2060, RELATING TO HUMAN TRAFFICKING CIVIL ACTIONS, SO AS TO PROVIDE THAT A VICTIM’S SEXUAL HISTORY IS NOT ADMISSIBLE BY A DEFENDANT IN A CIVIL ACTION; BY AMENDING SECTION 16‑3‑2070, RELATING TO VICTIMS’ RIGHTS AND THE STATE CRIME VICTIM’S COMPENSATION FUND, SO AS TO PROVIDE THAT HUMAN TRAFFICKING VICTIMS ARE CONSIDERED VICTIMS REGARDLESS OF IMMIGRATION STATUS, TO PROVIDE THAT THE PICTURES AND IMAGES OF VICTIMS MUST BE KEPT CONFIDENTIAL, AND TO PROVIDE THE PROTOCOL A LAW ENFORCEMENT OFFICER SHALL FOLLOW WHEN INTERACTING WITH A VICTIM; AND BY ADDING SECTION 16‑3‑2100, SO AS TO REQUIRE THE POSTING OF INFORMATION REGARDING THE NATIONAL HUMAN TRAFFICKING RESOURCE CENTER HOTLINE IN CERTAIN BUSINESSES.

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

SECTION 1. Section 16‑3‑2010 of the 1976 Code is amended to read:

“Section 16‑3‑2010. 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 or coerced 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 16‑3‑651;

(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.

(11) ‘Coercion’ means

(a) the use or threat of force against, abduction of, serious harm to, or physical restraint of a person;

(b) the use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of a person;

(c) the abuse or threatened abuse of law or legal process;

(d) the use of a person’s physical or mental impairment when the impairment has a substantial adverse effect on the person’s cognitive or volitional function; or

(e) the commission of civil or criminal fraud.”

SECTION 2. Section 16‑3‑2020 of the 1976 Code is amended to read:

“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 of 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. A person is considered a trafficker if the person solicits or participates in prostitution with another person knowing that the other person is a victim of trafficking in persons.

(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. A victim of trafficking in persons convicted of a violation of this article or prostitution may motion the court to vacate the conviction and expunge the record of the conviction. The court may grant the motion on a finding that the person’s participation in the offense was a direct result of being a victim. A victim of trafficking in persons is not subject to prosecution pursuant to this article or prostitution, if the victim was a minor at the time of the offense and committed the offense 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)~~(1) the victim’s connection by blood or marriage to a defendant in the case or to anyone involved in the victim’s trafficking;

~~(3)~~(2) 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)~~(3) age of consent to sex, legal age of marriage, or other discretionary age; and

~~(5)~~(4) mistake as to the victim’s age, even if the mistake is reasonable.

(L) A victim’s sexual history or history of commercial sexual activity, the specific instances of a victim’s sexual conduct, opinion evidence of a victim’s sexual conduct, and reputation evidence of a victim’s sexual conduct are not admissible by a defendant in a criminal action.

~~(L)~~(M) 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 3. Section 16‑3‑2030(A) of the 1976 Code is amended to read:

“(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. In addition, the court may consider disgorgement of profit from activity in violation of this article and disbarment from state and local government contracts.”

SECTION 4. Section 16‑3‑2040(D) of the 1976 Code is amended to read:

“(D) Restitution for this section, pursuant to Section 16‑3‑1270, means payment for all injuries, specific losses, and expenses, including, but not limited to, attorneys fees, sustained by a crime victim resulting from an offender’s criminal conduct pursuant to Section 16‑3‑1110(12)(a). In addition, the court may order an amount representing the value of the victim’s labor or services.”

SECTION 5. Section 16‑3‑2050 of the 1976 Code is amended by adding an appropriately numbered subsection to read:

“( ) To the extent that funds are appropriated, the task force may make grants to or contract with a state agency, local government, or private victims service organization to develop or expand service programs for victims. A recipient of a grant or contract shall report annually to the task force the number and demographic information of all victims receiving services pursuant to the grant or contract.”

SECTION 6. Section 16‑3‑2060 of the 1976 Code is amended by adding an appropriately numbered subsection to read:

“() A victim’s sexual history or history of commercial sexual activity, the specific instances of a victim’s sexual conduct, opinion evidence of a victim’s sexual conduct, and reputation evidence of a victim’s sexual conduct are not admissible by a defendant in a civil action.”

SECTION 7. Section 16‑3‑2070 of the 1976 Code is amended to read:

“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, regardless of immigration status. Victims of trafficking in persons pursuant to this article also are entitled to the rights provided in Article 15, Chapter 3, Title 16, regardless of immigration status.

(B) In addition to the provisions of subsection (A), in a prosecution for violations of the criminal provisions of this article, the identity, pictures, and images of the victim and the victim’s family must be kept confidential by ensuring that names, ~~and~~ identifying information, pictures, and images 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~~, photos, images, 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 4, Title 30.

(D) Upon request from a person whom a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the person to qualify for a nonimmigrant T or U visa pursuant to 8 U.S.C. Section 1101(a)(15(T), as amended, or 8 U.S.C. Section 1101(a)(15)(U), as amended, or for continued presence pursuant to 22 U.S.C. Section 7105(c)(3), as amended, the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give the person Form I‑91B or Form I‑918B provided by the United States Citizenship and Immigration Services and ask a federal law enforcement officer to request continued presence. If the law enforcement agency determines that a person does not meet the requirements of the agency to comply with this subsection, the agency shall inform the person of the reason, and that the person may make another request and submit additional evidence satisfying the requirements.”

SECTION 8. Article 19, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑2100. (A) The following establishments are required to post the information contained in subsection (B) regarding the National Human Trafficking Resource Center Hotline:

(1) an establishment which has been declared a nuisance for prostitution pursuant to Chapter 43, Title 15;

(2) an adult business, including a nightclub, bar, restaurant, or another similar establishment in which a person appears in a state of sexually explicit nudity, as defined in Section 16‑15‑375, or semi‑nudity, as defined in Section 57‑25‑120; and

(3) an airport, train station, and bus station.

(B) The information must be posted in a prominent location conspicuous to the public at the entrance of the establishment where posters and notices are customarily posted on a poster no smaller than eight and one‑half by eleven inches in size and must state the following:

‘If you or someone you know is being forced to engage in any activity and cannot leave, whether it is commercial sex, housework, farmwork, or any other activity, call the National Human Trafficking Resource Center Hotline at 1‑888‑373‑7888 to access help and services. Victims of human trafficking are protected under federal law and the laws of South Carolina. The hotline is:

(1) available twenty‑four hours a day, seven days a week;

(2) operated by a nonprofit, nongovernmental organization;

(3) anonymous and confidential;

(4) accessible in one hundred seventy languages; and

(5) able to provide help, referral to services, training, and general information.’

(C) The Department of Revenue and the Department of Transportation, as appropriate depending on the regulatory control or authority the respective department exercises over the establishment, are directed to provide each establishment with the notice required to be posted by this section. The departments shall post on the departments’ websites a sample of the notice required to be posted, which must be accessible for download.

(D) The Department of Revenue or the Department of Transportation, as appropriate, is authorized to issue a written warning to an establishment which fails to post the required notice provided in this section and may assess a fine of not more than fifty dollars for each subsequent violation. Each day that the establishment remains in violation of this section is considered a separate and distinct violation, and the establishment may be fined accordingly.

(E) The Department of Revenue and Department of Transportation are directed to collaborate on the design of the required notice to be posted and shall have the design finalized no later than sixty days after the effective date of this section. Establishments required to post the notice must be in compliance no later than six months after the effective date of this section.

(F) This section does not apply to establishments providing entertainment in theatres, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances when the performances presented are expressing matters of serious literary, artistic, scientific, or political value.”

SECTION 9. If any section, subsection, item, subitem, 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, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 10. This act takes effect upon approval by the Governor.

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