

1 **ENROLLED**

2 **H. B. 2814**

3  
4 (By Delegates Fleischauer, Poore, Guthrie, Moore,  
5 Sobonya, Hunt, Longstreth, Phillips, L., Marshall,  
6 Manchin and Wells)  
7

8 [Passed April 13, 2013; in effect ninety days from passage.]  
9

10 AN ACT to amend and reenact §61-2-17 of the Code of West Virginia,  
11 1931, as amended; relating to human trafficking; modifying  
12 definitions of human trafficking and sex trafficking of  
13 adults; authorizing civil cause of action and attorney fees  
14 for victims of human trafficking; specifying that a victim of  
15 human trafficking is a victim under the West Virginia Crime  
16 Victims Compensation Act; and providing a procedure for  
17 expunging certain prostitution convictions.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §61-2-17 of the Code of West Virginia, 1931, as amended,  
20 be amended and reenacted; and that said code be amended by adding  
21 thereto a new article, designated §61-11B-1, §61-11B-2, §61-11B-3,  
22 §61-11B-4, §61-11B-5, §61-11B-6 and §61-11B-7, all to read as  
23 follows:

24 **ARTICLE 2. CRIMES AGAINST THE PERSON.**

25 **§61-2-17. Human trafficking; criminal penalties.**

1 (a) As used in this section:

2 (1) "Debt bondage" means the status or condition of a debtor  
3 arising from a pledge by the debtor of the debtor's personal  
4 services or those of a person under the debtor's control as a  
5 security for debt, if the value of those services as reasonably  
6 assessed is not applied toward the liquidation of the debt or the  
7 length and nature of those services are not respectively limited  
8 and defined.

9 (2) "Forced labor or services" means labor or services that  
10 are performed or provided by another person and are obtained or  
11 maintained through a person's:

12 (A) Threat, either implicit or explicit, deception or fraud,  
13 scheme, plan, or pattern, or other action intended to cause a  
14 person to believe that, if the person did not perform or provide  
15 the labor or services that person or another person would suffer  
16 serious bodily harm or physical restraint: *Provided*, That, this  
17 does not include work or services provided by a minor to the  
18 minor's parent or legal guardian so long as the legal guardianship  
19 or custody of the minor was not obtained for the purpose compelling  
20 the minor to participate in commercial sex acts or sexually  
21 explicit performance, or perform forced labor or services.

22 (B) Physically restraining or threatening to physically  
23 restrain a person;

24 (C) Abuse or threatened abuse of the legal process; or

1 (D) Knowingly destroying, concealing, removing, confiscating,  
2 or possessing any actual or purported passport or other immigration  
3 document, or any other actual or purported government  
4 identification document, of another person.

5 "Forced labor or services" does not mean labor or services  
6 required to be performed by a person in compliance with a court  
7 order or as a required condition of probation, parole, or  
8 imprisonment.

9 (3) "Human trafficking" means the labor trafficking or sex  
10 trafficking involving adults or minors where two or more persons  
11 are trafficked within any one year period.

12 (4) "Labor trafficking" means the promotion, recruitment,  
13 transportation, transfer, harboring, enticement, provision,  
14 obtaining or receipt of a person by any means, whether a United  
15 States citizen or foreign national, for the purpose of:

16 (A) Debt bondage or forced labor or services; or

17 (B) Slavery or practices similar to slavery.

18 (5) "Sex trafficking of minors" means the promotion,  
19 recruitment, transportation, transfer, harboring, enticement,  
20 provision, obtaining or receipt of a person under the age of  
21 eighteen by any means, whether a United States citizen or foreign  
22 national, for the purpose of causing the minor to engage in sexual  
23 acts, or in sexual conduct violating the provisions of subsection  
24 (b), section five, article eight of this chapter or article eight-c

1 of this chapter.

2       (6) "Sex trafficking of adults" means the promotion,  
3 recruitment, transportation, transfer, harboring, enticement,  
4 provision, obtaining, receipt of a person eighteen years of age or  
5 older, whether a United States citizen or foreign national for the  
6 purposes of engaging in violations of subsection (b), section five,  
7 article eight of this chapter by means of force, threat, coercion,  
8 deception, abuse or threatened abuse of the legal process, or any  
9 scheme, plan, pattern, or other action intended to cause a person  
10 to believe that, if the person did not engage in a violation of  
11 subsection (b), section five, article eight of this chapter, that  
12 person or another person would suffer serious bodily harm or  
13 physical restraint.

14       (b) Any person who knowingly and wilfully engages in human  
15 trafficking is guilty of a felony and upon conviction shall be  
16 incarcerated in a state correctional facility for an indeterminate  
17 sentence of not less than three nor more than fifteen years or  
18 fined not more than \$200,000, or both.

19       (c) Any person who is a victim of human trafficking may bring  
20 a civil action in circuit court. The court may award actual  
21 damages, compensatory damages, punitive damages, injunctive relief  
22 and any other appropriate relief. A prevailing plaintiff is also  
23 entitled to attorneys fees and costs. Treble damages shall be  
24 awarded on proof of actual damages where defendant's acts were

1 willful and malicious.

2 (d) Notwithstanding the definition of victim in subsection  
3 (k), section three, article two-a, chapter fourteen of this code,  
4 a person who is a victim of human trafficking is a victim for all  
5 purposes of article two-a, chapter fourteen of this code.

6 (e) This article and the rights and remedies provided in this  
7 article are cumulative and in addition to other existing rights.

8 (f) Notwithstanding the age and criminal history limitations  
9 set forth in section twenty-six, article eleven of this chapter,  
10 any person convicted of prostitution in violation of subsection  
11 (b), section five, article eight of this chapter where the  
12 conviction was a result of the person being a victim of human  
13 trafficking as defined in this section, may petition the circuit  
14 court of the county of conviction for an order of expungement  
15 pursuant to section twenty-six, article eleven of this chapter.

16 No victim of human trafficking seeking relief under this  
17 subsection shall be required to prove her or she has rehabilitated  
18 himself or herself in order to obtain expungement.