

H. B. 2814

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[Introduced March 4, 2013; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §61-2-17 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §61-11B-1, §61-11B-2, §61-11B-3, §61-11B-4, §61-11B-5, §61-11B-6 and §61-11B-7, all relating to human trafficking; modifying definitions of human trafficking and sex trafficking of adults; authorizing forfeiture of certain assets used in human trafficking; authorizing civil cause of action for victims of human trafficking; requiring classification of victims and immigration assistance under specified circumstances; specifying

that a victim of human trafficking is a victim under the West Virginia Crime Victims Compensation Act; providing a procedure for vacating certain prostitution convictions; and providing that remedies are cumulative.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§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
19 guardianship or custody of the minor was not obtained for the
20 purpose compelling the minor to participate in commercial sex
21 acts or sexually explicit performance, or perform forced labor or
22 services.

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

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

26 (D) Knowingly destroying, concealing, removing,
27 confiscating, or possessing any actual or purported passport or
28 other immigration document, or any other actual or purported
29 government identification document, of another person.

30 “Forced labor or services” does not mean labor or services
31 required to be performed by a person in compliance with a court
32 order or as a required condition of probation, parole, or
33 imprisonment.

34 (3) “Human trafficking” means the labor trafficking or sex
35 trafficking involving adults or minors. ~~where two or more~~
36 ~~persons are trafficked within any one year period~~

37 (4) “Labor trafficking” means the promotion, recruitment,
38 transportation, transfer, harboring, enticement, provision,
39 obtaining or receipt of a person by any means, whether a United
40 States citizen or foreign national, for the purpose of:

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

42 (B) Slavery or practices similar to slavery.

43 (5) “Sex trafficking of minors” means the promotion,
44 recruitment, transportation, transfer, harboring, enticement,
45 provision, obtaining or receipt of a person under the age of
46 eighteen by any means, whether a United States citizen or
47 foreign national, for the purpose of causing the minor to engage
48 in sexual acts, or in sexual conduct violating the provisions of
49 subsection (b), section five, article eight of this chapter or article
50 eight-c of this chapter.

51 (6) “Sex trafficking of adults” means the promotion,
52 recruitment, transportation, transfer, harboring, enticement,
53 provision, obtaining, receipt of a person eighteen years of age or
54 older, whether a United States citizen or foreign national for the
55 purposes of engaging in violations of subsection (b), section five,
56 article eight of this chapter by means of force, threat, or
57 coercion, deception, abuse or threatened abuse of the legal
58 process, or any scheme, plan, pattern, or other action intended to
59 cause a person to believe that, if the person did not engage in a
60 violation of subsection (b), section five, article eight of this
61 chapter, that person or another person would suffer serious
62 bodily harm or physical restraint.

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

ARTICLE 11B. HUMAN TRAFFICKING VICTIM PROTECTION.

§61-11B-1. Short title.

1 This article may be referred to and cited as the Human
2 Trafficking Victim Protection Act.

§61-11B-2. Asset forfeiture; human trafficking.

1 (a) The following are subject to forfeiture:

2 (1) All property which is used, or has been used, or is
3 intended for use, in violation of section seventeen, article two of
4 this chapter.

5 (2) All conveyances, including aircraft, vehicles or vessels,
6 which are used, have been used, or are intended for use, to
7 transport, or in any manner to facilitate a violation of section
8 seventeen, article two of this chapter, except that:

9 (A) A conveyance used by any person as a common carrier
10 in the transaction of business as a common carrier may not be
11 forfeited under this section unless it appears that the person
12 owning the conveyance is a consenting party or privy to a
13 violation of section seventeen of this article;

14 (B) A conveyance may not be forfeited under the provisions
15 of this article if the person owning the conveyance establishes
16 that he or she neither knew, nor had reason to know, that the
17 conveyance was being employed or was likely to be employed
18 in a violation of section seventeen, article two of this chapter;
19 and

20 (C) A bona fide security interest or other valid lien in any
21 conveyance may not be forfeited under the provisions of this
22 article, unless the state proves by a preponderance of the
23 evidence that the holder of the security interest or lien either
24 knew, or had reason to know, that the conveyance was being
25 used or was likely to be used in a violation of section seventeen,
26 article two of this chapter;

27 (3) All money, negotiable instruments, securities or other
28 proceeds derived from or intended to be used to facilitate any
29 violation of section seventeen, article two of this chapter:
30 Provided, That property may not be forfeited under this
31 subdivision, to the extent of the interest of an owner, by reason
32 of any act or omission established by that owner to have been
33 committed or omitted without his or her knowledge or consent;
34 and

35 (4) All real property, including any right, title and interest in
36 any lot or tract of land, and any appurtenances or improvements,
37 which are used, or have been used, or are intended to be used, in
38 any manner or part, to commit or to facilitate the commission of
39 a violation of section seventeen, article two of this chapter:

40 Provided, That property may not be forfeited under this
41 subdivision, to the extent of an interest of an owner, by reason of
42 any act or omission established by that owner to have been
43 committed or omitted without his or her knowledge or consent.

44 (5) The requirements of this subsection pertaining to the
45 removal of seized property are not mandatory in the case of real
46 property and the appurtenances to the real property.

47 (b) Notwithstanding any other provisions of this article to
48 the contrary, any items of real property or any items of tangible
49 personal property sold to a bona fide purchaser are not subject to
50 forfeiture unless the state establishes by clear and convincing
51 proof that the bona fide purchaser knew or should have known
52 that the property had in the previous three years next preceding
53 the sale been used in violation of section seventeen, article two
54 of this chapter.

§61-11B-3. Civil cause of action for victims of human trafficking.

1 Any person who is a victim of human trafficking may bring
2 a civil action in circuit court. The court may award actual
3 damages, compensatory damages, punitive damages, injunctive
4 relief and any other appropriate relief. A prevailing plaintiff is

5 also entitled to attorneys fees and costs. Treble damages shall be
6 awarded on proof of actual damages where defendant's acts were
7 willful and malicious.

§61-11B-4. Classification of victims; immigration assistance.

1 (a) As soon as practicable after the initial encounter with a
2 person who reasonably appears to a law-enforcement agency or
3 prosecuting attorneys' office to be a victim of human trafficking,
4 the agency or office shall:

5 (1) Notify the victim that he or she may be eligible for
6 assistance from the Crime Victim Compensation Fund and
7 provide an application to the victim; and

8 (2) Make a preliminary assessment of whether the victim or
9 possible victim of human trafficking appears to meet the criteria
10 for certification as a victim of a severe form of trafficking in
11 persons as defined in section 7105 of Title 22 of the United
12 States Code (Trafficking Victims Protection Act) or appears to
13 be otherwise eligible for any federal, state or local benefits and
14 services. If it is determined that the victim appears to meet those
15 criteria, the agency or office shall report the finding to the victim
16 and shall refer the victim to services available, including legal

17 service providers. If the possible victim is under the age of
18 eighteen or is a vulnerable adult, the agency or office shall also
19 notify the West Virginia Department of Health and Human
20 Resources.

21 (b) After the agency or office makes a preliminary
22 assessment pursuant to subdivision (2), subsection (a) of this
23 section that a victim of human trafficking or a possible victim of
24 human trafficking appears to meet the criteria for certification as
25 a victim of a severe form of trafficking in persons, as defined in
26 section 7105 of Title 22 of the United States Code and upon the
27 request of the victim, the agency or office shall provide the
28 victim of human trafficking with a completed and executed
29 United States Citizenship and Immigration Service Form I-914,
30 Supplement B, Declaration of Law-Enforcement Officer for
31 Victim of Human Trafficking in Persons or a United States
32 Citizenship and Immigration Service Form I-918, Supplement B,
33 U Nonimmigrant Status Certification, or both. These
34 endorsements shall be completed by the certifying officer in
35 accordance with the forms' instructions and applicable rules and
36 regulations. The victim of human trafficking may choose which
37 form to have the certifying officer complete.

§61-11B-5. Victim of human trafficking is a victim under West Virginia Crime Victims Compensation Act.

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

§61-11B-6. Vacating convictions.

1 (a) (1) A person convicted of prostitution in violation of
2 subsection (b), section five, article eight of this chapter may file
3 a motion to vacate the conviction if it was obtained as a result of
4 the person having been a victim of human trafficking.

5 (2) A motion under this section shall be made with due
6 diligence, after the defendant has ceased to be a victim of the
7 trafficking or has sought services for victims of trafficking,
8 subject to reasonable concerns for the safety of the defendant,
9 family members of the defendant, or other victims of the
10 trafficking that may be jeopardized by the bringing of such a
11 motion, or for other reasons consistent with the purpose of this
12 section.

13 (3) The motion must be in writing, describe the supporting
14 evidence with particularity and include copies of any documents

15 showing that the moving party is entitled to relief under this
16 section.

17 (4) The court shall hold a hearing on the motion, provided
18 that the court may dismiss a motion without a hearing if the
19 court finds that the motion fails to assert a claim for which relief
20 may be granted.

21 (5) The court shall grant the motion if it finds by a
22 preponderance of the evidence that:

23 (A) The moving party was convicted of prostitution in
24 violation of subsection (b), section five, article eight of chapter
25 sixty one; and

26 (B) The conviction was obtained as a result of the moving
27 party's having been a victim of human trafficking.

28 (6) If the motion is granted, the court shall vacate the
29 conviction, strike the adjudication of guilt, and order the
30 expungement of the record of the criminal proceedings. The
31 court shall issue an order to expunge, or redact the moving
32 party's name from all records and files related to the moving
33 party's arrest, citation, investigation, charge, adjudication of
34 guilt, criminal proceedings and probation for the offense.

§61-11B-7. Remedies provided cumulative.

- 1 This article and the rights and remedies provided in this
- 2 article are cumulative and in addition to other existing rights.

NOTE: The purpose of this bill is to provide assistance to victims of human trafficking. It does this by:

- (1) Altering the definitions of human trafficking and sex trafficking of adults;
- (2) Authorizing the forfeiture of certain assets used in human trafficking;
- (3) Authorizing a civil cause of action for victims of human trafficking;
- (4) Requiring classification of victims of human trafficking and immigration assistance under specified circumstances;
- (5) Specifying that a victim of human trafficking is a victim under the West Virginia Crime Victims Compensation Act;
- (6) Providing a procedure for vacating certain prostitution convictions; and
- (7) Providing that these remedies are cumulative and in addition to other existing rights.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§61-11B-1, §61-11B-2, §61-11B-3, §61-11B-4, §61-11B-5, §61-11B-6 and §61-11B-7 are new; therefore, they have been completely underscored.

