

H. B. 2553

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

(By Delegates Perdue, Sponaugle, Pushkin, Hornbuckle, Morgan,
Hartman, R. Phillips and Bates)

[Introduced February 2, 2015; referred to the
Committee on Health and Human Resources then the Judiciary.]

**FISCAL
NOTE**

A BILL to amend and reenact §61-2-17 of the Code of West Virginia, 1931, as amended, relating to crimes against the person; human trafficking; definitions; forfeiture procedure; and criminal penalties.

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 to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

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

(a) As used in this section:

(1) "Adult" means an individual eighteen years of age or older.

(2) "Business entity" means a person other than an individual.

(3) "Coercion" means:

(A) The use or threat of force against, abduction of, serious harm to, or physical restraint of an individual;

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

4 (C) The abuse or threatened abuse of law or legal process;

5 (D) Controlling or threatening to control an individual's access to a controlled substance set
6 forth in chapter sixty-a of this code;

7 (E) The destruction of taking of, or the threat to destroy or take an individual's identification
8 document or other property;

9 (F) Use of debt bondage;

10 (G) The use of an individual's physical or mental impairment, where such impairment has
11 substantial adverse effects on the individual's cognitive or volitional functions; or

12 (H) The commission of civil or criminal fraud.

13 (4) "Commercial sexual activity" means sexual activity for which anything of value is given
14 to, promised to, or received by a person.

15 (5) "Debt bondage" means ~~the status or condition of a debtor arising from a pledge by the~~
16 ~~debtor of the debtor's personal services or those of a person under the debtor's control as a security~~
17 ~~for debt, if the value of those services as reasonably assessed is not applied toward the liquidation~~
18 ~~of the debt or the length and nature of those services are not respectively limited and defined.~~
19 inducing an individual to provide:

20 (A) Commercial sexual activity in payment toward or satisfaction of a real or purported debt;
21 or

22 (B) Labor or services in payment toward or satisfaction of a real or purported debt if:

1 (i) The reasonable value of the labor or services is not applied toward the liquidation of the
2 debt; or

3 (ii) The length of the labor or services is not limited and the nature of the labor or services
4 is not defined.

5 ~~(2)~~ (6) "Forced labor or services" means labor or services that are performed or provided by
6 another person and are obtained or maintained through a person's:

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

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

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

16 (D) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or
17 purported passport or other immigration document, or any other actual or purported government
18 identification document, of another person.

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

22 ~~(3)~~ (7) "Human trafficking" means the labor trafficking or sex trafficking involving adults

1 or minors where two or more persons are trafficked within any one year period.

2 (8) "Identification document" means a passport, driver's license, immigration document,
3 travel document, or other government-issued identification document, including a document issued
4 by a foreign government.

5 (9) "Labor or services" means activity having economic value.

6 ~~(4)~~ (10) "Labor trafficking" means the promotion, recruitment, transportation, transfer,
7 harboring, enticement, provision, obtaining or receipt of a person by any means, whether a United
8 States citizen or foreign national, for the purpose of:

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

10 (B) Slavery or practices similar to slavery.

11 (11) "Minor" means an individual less than eighteen years of age.

12 (12) "Person" means an individual, estate, business or nonprofit entity, or other legal entity.

13 The term does not include a public corporation, government or governmental subdivision, agency,
14 or instrumentality.

15 (13) "Public corporation" means an entity that is:

16 (A) Owned by a government, or a governmental subdivision, agency, or instrumentality; or

17 (B) Created to perform a governmental function or to operate under the control of a
18 government or governmental subdivision, agency, or instrumentality.

19 (14) "Serious harm" means harm, whether physical or nonphysical, including psychological,
20 economic, or reputational, to an individual which would compel a reasonable individual of the same
21 background and in the same circumstances to perform or continue to perform labor or services or
22 sexual activity to avoid incurring the harm.

1 ~~(5)~~ (15) "Sex trafficking of minors" means the promotion, recruitment, transportation,
2 transfer, harboring, enticement, provision, obtaining or receipt of a person under the age of eighteen
3 by any means, whether a United States citizen or foreign national, for the purpose of causing the
4 minor to engage in sexual acts, or in sexual conduct violating the provisions of subsection (b),
5 section five, article eight of this chapter or article eight-c of this chapter.

6 ~~(6)~~ (16) "Sex trafficking of adults" means the promotion, recruitment, transportation, transfer,
7 harboring, enticement, provision, obtaining, receipt of a person eighteen years of age or older,
8 whether a United States citizen or foreign national for the purposes of engaging in violations of
9 subsection (b), section five, article eight of this chapter by means of force, threat, coercion,
10 deception, abuse or threatened abuse of the legal process, or any scheme, plan, pattern, or other
11 action intended to cause a person to believe that, if the person did not engage in a violation of
12 subsection (b), section five, article eight of this chapter, that person or another person would suffer
13 serious bodily harm or physical restraint.

14 (17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
15 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
16 United States. The term includes an Indian tribe or band recognized by federal law or formally
17 acknowledged by a state.

18 (18) "Victim" means an individual who is subjected to human trafficking or to conduct that
19 would have constituted human trafficking had this section been in effect when the conduct occurred,
20 regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

21 (b) A business entity may be prosecuted for an offense under this section if:

22 (1) The entity knowingly engages in conduct that constitutes human trafficking; or

1 (2) An employee or nonemployee agent of the entity engages in conduct that constitutes
2 human trafficking and the commission of the offense was part of a pattern of illegal activity under
3 this section for the benefit of the entity, which the entity knew was occurring and failed to take
4 effective action to stop.

5 (c) The court may consider the severity of a business entity's offense under this section and
6 order penalties in addition to those otherwise provided for the offense, including:

7 (1) A fine of not more than \$1 million for each offense;

8 (2) Disgorgement of profit from illegal activity in violation of this section; and

9 (3) Debarment from state and local government contracts.

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

13 ~~(c)~~ (e) Any person who is a victim of human trafficking may bring a civil action in circuit
14 court. The court may award actual damages, compensatory damages, punitive damages, injunctive
15 relief and any other appropriate relief. A prevailing plaintiff is also entitled to attorneys fees and
16 costs. Treble damages shall be awarded on proof of actual damages where defendant's acts were
17 willful and malicious.

18 (f) On motion, the court shall order a person convicted of an offense under this section to
19 forfeit:

20 (1) Any interest in real or personal property that was used or intended to be used to commit
21 or facilitate the commission of the offense; and

22 (2) Any interest in real or personal property constituting or derived from proceeds that the

1 person obtained, directly or indirectly, as a result of the offense.

2 (g) In any proceeding against real or personal property under this section, the owner may
3 assert a defense, and has the burden of establishing, by a preponderance of the evidence, that the
4 forfeiture is manifestly disproportional to the seriousness of the offense.

5 (h) Proceeds from the public sale or auction of property forfeited under subsection (a) must
6 be distributed in the manner otherwise provided for the distribution of the proceeds of criminal
7 forfeitures and judicial sales.

8 ~~(d)~~ (i) Notwithstanding the definition of victim in subsection (k), section three, article two-a,
9 chapter fourteen of this code, a person who is a victim of human trafficking is a victim for all
10 purposes of article two-a, chapter fourteen of this code.

11 ~~(e)~~ (j) This article and the rights and remedies provided in this article are cumulative and in
12 addition to other existing rights.

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

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

NOTE: The purpose of this bill is to amend the human trafficking statute so that certain definitions and provisions conform to provisions of a bill on Human Trafficking that has been approved by the Uniform Law Commission and unanimously approved by the ABA House of Delegates.

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