

1 **H. B. 2814**

2
3 (By Delegates Fleischauer, Poore, Guthrie, Moore,
4 Sobonya, Hunt, Longstreth, Phillips, L., Marshall,
5 Manchin and Wells)
6

7 [Introduced March 4, 2013; referred to the
8 Committee on the Judiciary.]
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10 A BILL to amend and reenact §61-2-17 of the Code of West Virginia,
11 1931, as amended; and to amend said code by adding thereto a
12 new article, designated §61-11B-1, §61-11B-2, §61-11B-3,
13 §61-11B-4, §61-11B-5, §61-11B-6 and §61-11B-7, all relating to
14 human trafficking; modifying definitions of human trafficking
15 and sex trafficking of adults; authorizing forfeiture of
16 certain assets used in human trafficking; authorizing civil
17 cause of action for victims of human trafficking; requiring
18 classification of victims and immigration assistance under
19 specified circumstances; specifying that a victim of human
20 trafficking is a victim under the West Virginia Crime Victims
21 Compensation Act; providing a procedure for vacating certain
22 prostitution convictions; and providing that remedies are
23 cumulative.

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

25 That §61-2-17 of the Code of West Virginia, 1931, as amended,
26 be amended and reenacted; and that said code be amended by adding

1 thereto a new article, designated §61-11B-1, §61-11B-2, §61-11B-3,
2 §61-11B-4, §61-11B-5, §61-11B-6 and §61-11B-7, all to read as
3 follows:

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

5 **§61-2-17. Human trafficking; criminal penalties.**

6 (a) As used in this section:

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

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

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

1 the minor to participate in commercial sex acts or sexually
2 explicit performance, or perform forced labor or services.

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

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

6 (D) Knowingly destroying, concealing, removing, confiscating,
7 or possessing any actual or purported passport or other immigration
8 document, or any other actual or purported government
9 identification document, of another person.

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

14 (3) "Human trafficking" means the labor trafficking or sex
15 trafficking involving adults or minors. ~~where two or more persons~~
16 ~~are trafficked within any one year period~~

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

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

22 (B) Slavery or practices similar to slavery.

23 (5) "Sex trafficking of minors" means the promotion,
24 recruitment, transportation, transfer, harboring, enticement,

1 provision, obtaining or receipt of a person under the age of
2 eighteen by any means, whether a United States citizen or foreign
3 national, for the purpose of causing the minor to engage in sexual
4 acts, or in sexual conduct violating the provisions of subsection
5 (b), section five, article eight of this chapter or article eight-c
6 of this chapter.

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

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

24 **ARTICLE 11B. HUMAN TRAFFICKING VICTIM PROTECTION.**

1 **§61-11B-1. Short title.**

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

4 **§61-11B-2. Asset forfeiture; human trafficking.**

5 (a) The following are subject to forfeiture:

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

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

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

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

23 (C) A bona fide security interest or other valid lien in any
24 conveyance may not be forfeited under the provisions of this

1 article, unless the state proves by a preponderance of the evidence
2 that the holder of the security interest or lien either knew, or
3 had reason to know, that the conveyance was being used or was
4 likely to be used in a violation of section seventeen, article two
5 of this chapter;

6 (3) All money, negotiable instruments, securities or other
7 proceeds derived from or intended to be used to facilitate any
8 violation of section seventeen, article two of this chapter:
9 Provided, That property may not be forfeited under this
10 subdivision, to the extent of the interest of an owner, by reason
11 of any act or omission established by that owner to have been
12 committed or omitted without his or her knowledge or consent; and

13 (4) All real property, including any right, title and interest
14 in any lot or tract of land, and any appurtenances or improvements,
15 which are used, or have been used, or are intended to be used, in
16 any manner or part, to commit or to facilitate the commission of a
17 violation of section seventeen, article two of this chapter:
18 Provided, That property may not be forfeited under this
19 subdivision, to the extent of an interest of an owner, by reason of
20 any act or omission established by that owner to have been
21 committed or omitted without his or her knowledge or consent.

22 (5) The requirements of this subsection pertaining to the
23 removal of seized property are not mandatory in the case of real
24 property and the appurtenances to the real property.

1 (b) Notwithstanding any other provisions of this article to
2 the contrary, any items of real property or any items of tangible
3 personal property sold to a bona fide purchaser are not subject to
4 forfeiture unless the state establishes by clear and convincing
5 proof that the bona fide purchaser knew or should have known that
6 the property had in the previous three years next preceding the
7 sale been used in violation of section seventeen, article two of
8 this chapter.

9 **§61-11B-3. Civil cause of action for victims of human trafficking.**

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

17 **§61-11B-4. Classification of victims; immigration assistance.**

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

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

1 (2) Make a preliminary assessment of whether the victim or
2 possible victim of human trafficking appears to meet the criteria
3 for certification as a victim of a severe form of trafficking in
4 persons as defined in section 7105 of Title 22 of the United States
5 Code (Trafficking Victims Protection Act) or appears to be
6 otherwise eligible for any federal, state or local benefits and
7 services. If it is determined that the victim appears to meet those
8 criteria, the agency or office shall report the finding to the
9 victim and shall refer the victim to services available, including
10 legal service providers. If the possible victim is under the age of
11 eighteen or is a vulnerable adult, the agency or office shall also
12 notify the West Virginia Department of Health and Human Resources.

13 (b) After the agency or office makes a preliminary assessment
14 pursuant to subdivision (2), subsection (a) of this section that a
15 victim of human trafficking or a possible victim of human
16 trafficking appears to meet the criteria for certification as a
17 victim of a severe form of trafficking in persons, as defined in
18 section 7105 of Title 22 of the United States Code and upon the
19 request of the victim, the agency or office shall provide the
20 victim of human trafficking with a completed and executed United
21 States Citizenship and Immigration Service Form I-914, Supplement
22 B, Declaration of Law-Enforcement Officer for Victim of Human
23 Trafficking in Persons or a United States Citizenship and
24 Immigration Service Form I-918, Supplement B, U Nonimmigrant Status

1 Certification, or both. These endorsements shall be completed by
2 the certifying officer in accordance with the forms' instructions
3 and applicable rules and regulations. The victim of human
4 trafficking may choose which form to have the certifying officer
5 complete.

6 **§61-11B-5. Victim of human trafficking is a victim under West**
7 **Virginia Crime Victims Compensation Act.**

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

12 **§61-11B-6. Vacating convictions.**

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

17 (2) A motion under this section shall be made with due
18 diligence, after the defendant has ceased to be a victim of the
19 trafficking or has sought services for victims of trafficking,
20 subject to reasonable concerns for the safety of the defendant,
21 family members of the defendant, or other victims of the
22 trafficking that may be jeopardized by the bringing of such a
23 motion, or for other reasons consistent with the purpose of this
24 section.

1 (3) The motion must be in writing, describe the supporting
2 evidence with particularity and include copies of any documents
3 showing that the moving party is entitled to relief under this
4 section.

5 (4) The court shall hold a hearing on the motion, provided
6 that the court may dismiss a motion without a hearing if the court
7 finds that the motion fails to assert a claim for which relief may
8 be granted.

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

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

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

16 (6) If the motion is granted, the court shall vacate the
17 conviction, strike the adjudication of guilt, and order the
18 expungement of the record of the criminal proceedings. The court
19 shall issue an order to expunge, or redact the moving party's name
20 from all records and files related to the moving party's arrest,
21 citation, investigation, charge, adjudication of guilt, criminal
22 proceedings and probation for the offense.

23 **§61-11B-7. Remedies provided cumulative.**

24 This article and the rights and remedies provided in this

1 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.