

**H. B. 4344**

(By Delegates Fleischauer, Poore,  
Guthrie, Perdue, Barrett, Skinner,  
Sobonya, Barker, Diserio, Hunt and Young)

[Introduced January 28, 2014; referred to the  
Committee on the Judiciary then Finance.]

**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 18 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;

(B) The use of a plan, pattern, or statement with intent to

1 cause an individual to believe that failure to perform an act will  
2 result in the use of force against, abduction of, serious harm to,  
3 or 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  
6 access to a controlled substance set forth in chapter sixty-a of  
7 this code;

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

10 (F) Use of debt bondage;

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

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

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

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

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

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

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

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

9        ~~(2)~~ (6) "Forced labor or services" means labor or services  
10 that are performed or provided by another person and are obtained  
11 or 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)~~ (7) "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 (8) "Identification document" means a passport, driver's  
13 license, immigration document, travel document, or other  
14 government-issued identification document, including a document  
15 issued by a foreign government.

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

17 ~~(4)~~ (10) "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 (11) "Minor" means an individual less than eighteen years of  
24 age.

1       (12) "Person" means an individual, estate, business or  
2 nonprofit entity, or other legal entity. The term does not include  
3 a public corporation, government or governmental subdivision,  
4 agency, or instrumentality.

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

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

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

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

17       ~~(5)~~ (15) "Sex trafficking of minors" means the promotion,  
18 recruitment, transportation, transfer, harboring, enticement,  
19 provision, obtaining or receipt of a person under the age of  
20 eighteen by any means, whether a United States citizen or foreign  
21 national, for the purpose of causing the minor to engage in sexual  
22 acts, or in sexual conduct violating the provisions of subsection  
23 (b), section five, article eight of this chapter or article eight-c  
24 of this chapter.

1       ~~(6)~~ (16) "Sex trafficking of adults" means the promotion,  
2 recruitment, transportation, transfer, harboring, enticement,  
3 provision, obtaining, receipt of a person eighteen years of age or  
4 older, whether a United States citizen or foreign national for the  
5 purposes of engaging in violations of subsection (b), section five,  
6 article eight of this chapter by means of force, threat, coercion,  
7 deception, abuse or threatened abuse of the legal process, or any  
8 scheme, plan, pattern, or other action intended to cause a person  
9 to believe that, if the person did not engage in a violation of  
10 subsection (b), section five, article eight of this chapter, that  
11 person or another person would suffer serious bodily harm or  
12 physical restraint.

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

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

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

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

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

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

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

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

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

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

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

1 awarded on proof of actual damages where defendant's acts were  
2 willful and malicious.

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

5 (1) Any interest in real or personal property that was used or  
6 intended to be used to commit or facilitate the commission of the  
7 offense: and

8 (2) Any interest in real or personal property constituting or  
9 derived from proceeds that the person obtained, directly or  
10 indirectly, as a result of the offense.

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

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

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

24 ~~(e)~~ (j) This article and the rights and remedies provided in



1 this article are cumulative and in addition to other existing  
2 rights.

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

11       No victim of human trafficking seeking relief under this  
12 subsection ~~shall~~ may be required to prove ~~her~~ he or she has  
13 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.