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H. B. 2203

(By Delegates Rowan, L. Phillips, Miller, Sobonya, P. Smith,
Border, Arvon and Storch)

[Introduced January 22, 2015; 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, relating to human trafficking; redefining the parameters for the offense of human trafficking; civil remedies; and 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) “Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of the debtor's personal services or those of a person under the debtor's control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

1 (2) “Forced labor or services” means labor or services that are performed or provided by
2 another person and are obtained or maintained through a person’s:

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

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

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

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

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

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

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

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

2 (B) Slavery or practices similar to slavery.

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

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

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

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

1 malicious.

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

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

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

12 No victim of human trafficking seeking relief under this subsection shall be required to prove
13 he or she has rehabilitated himself or herself in order to obtain expungement.

NOTE: The purpose of this bill is to amend the provisions of the current Code to human trafficking to allow for the charges to be brought and associated remedies are available when even a single individual is exploited and victimized by sex trafficking or labor trafficking.

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

This bill was recommended for passage during the 2015 Legislative Session by the House Select Committee on Crimes Against Children.