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WEST VIRGINIA LEGISLATURE

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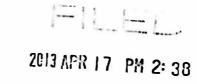
ENROLLED

House Bill No. 2814

(By Delegate(s) Fleischauer, Poore, Guthrie, Moore, Sobonya, Hunt, Longstreth, L. Phillips, Marshall, Manchin and Wells)

Passed April 13, 2013

In effect ninety days from passage.



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H. B. 2814

(BY DELEGATE(S) FLEISCHAUER, POORE, GUTHRIE, MOORE, SOBONYA, HUNT, LONGSTRETH, L. PHILLIPS, MARSHALL, MANCHIN AND WELLS)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §61-2-17 of the Code of West Virginia, 1931, as amended; relating to human trafficking; modifying definitions of human trafficking and sex trafficking of adults; authorizing civil cause of action and attorney fees for victims of human trafficking; specifying that a victim of human trafficking is a victim under the West Virginia Crime Victims Compensation Act; and providing a procedure for expunging certain prostitution convictions.

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 guardianship or custody of the minor was not obtained for the 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.

- "Forced labor or services" does not mean labor or services required to be performed by a person in compliance with a court order or as a required condition of probation, parole, or 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.
- (4) "Labor trafficking" means the promotion, recruitment,
 transportation, transfer, harboring, enticement, provision,
 obtaining or receipt of a person by any means, whether a United
 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.

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

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- 63 (b) Any person who knowingly and wilfully engages in human trafficking is guilty of a felony and upon conviction shall 64 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.
- 68 (c) Any person who is a victim of human trafficking may 69 bring a civil action in circuit court. The court may award actual 70 damages, compensatory damages, punitive damages, injunctive relief and any other appropriate relief. A prevailing plaintiff is also entitled to attorneys fees and costs. Treble damages shall be 72 73 awarded on proof of actual damages where defendant's acts were 74 willful and malicious.
 - (d) Notwithstanding the definition of victim in subsection (k), section three, article two-a, chapter fourteen of this code, a person who is a victim of human trafficking is a victim for all purposes of article two-a, chapter fourteen of this code.
- 79 (e) This article and the rights and remedies provided in this 80 article are cumulative and in addition to other existing rights.
- (f) Notwithstanding the age and criminal history limitations set forth in section twenty-six, article eleven of this chapter, any 83 person convicted of prostitution in violation of subsection (b), 84 section five, article eight of this chapter where the conviction 85 was a result of the person being a victim of human trafficking as 86 defined in this section, may petition the circuit court of the county of conviction for an order of expungement pursuant to 87 section twenty-six, article eleven of this chapter. 88

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee Originating in the House. In effect ninety days from passage. Clerk of the Senate Jouse of Delegates 2013.

PRESENTED TO THE GOVERNOR

APR 1 7 2013

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