

HB 2814 (veto)

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2013 APR 17 PM 2:38

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WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013



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
19 guardianship or custody of the minor was not obtained for the
20 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.

30 “Forced labor or services” does not mean labor or services
31 required to be performed by a person in compliance with a court
32 order or as a required condition of probation, parole, or
33 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.

37 (4) “Labor trafficking” means the promotion, recruitment,
38 transportation, transfer, harboring, enticement, provision,
39 obtaining or receipt of a person by any means, whether a United
40 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.

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.

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

63 (b) Any person who knowingly and wilfully engages in
64 human trafficking is guilty of a felony and upon conviction shall
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
71 relief and any other appropriate relief. A prevailing plaintiff is
72 also entitled to attorneys fees and costs. Treble damages shall be
73 awarded on proof of actual damages where defendant's acts were
74 willful and malicious.

75 (d) Notwithstanding the definition of victim in subsection
76 (k), section three, article two-a, chapter fourteen of this code, a
77 person who is a victim of human trafficking is a victim for all
78 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.

81 (f) Notwithstanding the age and criminal history limitations
82 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
87 county of conviction for an order of expungement pursuant to
88 section twenty-six, article eleven of this chapter.

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

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

Danny Walk

Chairman, House Committee

[Signature]

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Gregory D. Seal

Clerk of the House of Delegates

Joseph M. Minard

Clerk of the Senate

[Signature]

Speaker of the House of Delegates

[Signature]

President of the Senate

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The within is disapproval this the 1th
day of April, 2013.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

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Time 11:24 am