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HOUSE BILL NO. 965

Offered January 11, 2006

Prefiled January 10, 2006

A *BILL to amend the Code of Virginia by adding in Chapter 4 of Title 18.2 an article numbered 10, consisting of sections numbered 18.2-76.3 through 18.2-76.9, creating the Human Trafficking Act; penalties.*

Patrons—Ebbin, Albo and Hull

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 4 of Title 18.2 an article numbered 10, consisting of sections numbered 18.2-76.3 through 18.2-76.9 as follows:

*Article 10.**Human Trafficking Act.**§ 18.2-76.3. Definitions:*

"Commercial sexual act" means any sex act on account of which anything of value is given, promised to, or received directly or indirectly by any person.

"Financial harm" includes credit extortion, entering into or enforcing a contract for the payment of interest at a rate that exceeds the maximum rate allowed by applicable statute, and entering into or performing an agreement of employment upon which no action may be brought or maintained, as provided in subdivision 8 of § 11-2.

"Labor" means work of economic or financial value.

"Person" includes an individual, corporation, partnership, association, a governmental body, a municipal corporation or any other legal entity.

"Services" means an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor.

"Sexually-explicit performance" means a live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.

"Victim of trafficking in persons" means any person, whether a U.S. citizen or foreign national, who has been subject to the crime of trafficking in persons or sexual servitude of a minor.

§ 18.2-76.4. Trafficking in persons.

A. Any person who, through use of the following means:

(i) knowingly recruits, entices, harbors, transports, provides, or obtains another person for the purposes of commercial sex acts or sexually explicit performance, or labor or services; or

(ii) knowingly forces another person to commit commercial sex acts or sexually explicit performances or to provide labor or services is guilty of a Class 5 felony:

1. Causing or threatening to cause serious harm to any person;

2. Physically restraining or threatening to physically restrain another person;

3. Abusing or threatening to abuse the law or legal process;

4. Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;

5. Extortion;

6. Causing or threatening to cause financial harm to any person; or

7. Facilitating or controlling a victim's access to an addictive controlled substance.

B. Any person who, through any means,

(i) knowingly recruits, entices, transports, provides, obtains, or harbors, or so attempts, any person under 18 years of age for the purposes of commercial sex acts or sexually explicit performance; or

(ii) knowingly forces such person to commit commercial sex acts or sexually explicit performances is guilty of a Class 4 felony.

C. Any person who knowingly benefits, financially or by receiving anything of value, from participation in an act described in subsection A or B is guilty of a Class 5 felony.

D. A defendant that is not an individual shall, upon conviction of a violation of this section, be subject to a fine not exceeding the greater of \$50,000 or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person.

§ 18.2-76.5. Victim liability for criminal activity.

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59 A. A victim of trafficking in persons is not criminally liable for prostitution or other criminal offense
60 he was compelled or coerced to commit while a victim of trafficking.

61 B. In a prosecution for violations of this article, evidence of a victim's past sexual behavior is
62 inadmissible for the purpose of proving that the victim engaged in other sexual behavior, or to prove
63 the victim's sexual predisposition.

64 § 18.2-76.6. Age of consent and mistake as to age are not defenses to trafficking.

65 A. Age of consent to sex, legal age of marriage, or other discretionary age is not a defense to a
66 criminal violation under this article.

67 B. Mistake as to the victim's age is no defense to a criminal violation under this article.

68 § 18.2-76.7. Restitution.

69 A. A person convicted of a criminal violation under this article shall be ordered to pay restitution to
70 the victim as provided in § 19.2-305.1 et seq. for the following:

71 1. Costs of medical and psychological treatment;

72 2. Costs of physical and occupational therapy and rehabilitation;

73 3. Costs of necessary transportation, temporary housing, and child care;

74 4. Lost income;

75 5. Reasonable attorney fees and other costs of representation including victim advocate fees;

76 6. Gross income or value to the defendant of the victim's services or labor;

77 7. Compensation for emotional distress, pain, and suffering; and

78 8. Any other compensable losses suffered by the victim.

79 B. The return of the victim to his home country or other absence of the victim from the jurisdiction
80 shall not prejudice the victim's right to receive restitution.

81 § 18.2-76.8. Civil liability.

82 A. An action for injunctive relief or civil damages or both shall lie for any person who is a victim of
83 human trafficking in violation of § 18.2-76.4.

84 B. Any aggrieved party who prevails in an action brought under this section shall be entitled to
85 damages, including punitive damages, and, in the discretion of the court, costs of litigation and
86 reasonable attorney fees in an amount fixed by the court.

87 § 18.2-76.9. Seizure and forfeiture of trafficking assets.

88 All property, including, but not limited to, money, valuables, real property, and vehicles, of persons
89 convicted of a criminal violation of this article that was used or intended to be used, or was obtained in
90 the course of the crime of human trafficking, or benefits gained from the proceeds of such crime, shall
91 be seized and forfeited to the Commonwealth in accordance with the provisions of Chapter 22.1 of Title
92 19.2 (§ 19.2-386.1 et seq.), mutatis mutandis.

93 **2. That the Governor shall establish an interagency task force to develop and implement a State
94 Plan for the Prevention of Trafficking in Persons.**

95 (a) The task force shall meet at least annually and should address all aspects of trafficking,
96 including the recruitment, abduction, transport, harboring, transfer, sale, or receipt of persons,
97 whether U.S. citizens or foreign nationals, within state, national, or across international borders by
98 any means, to place persons in situations of slavery or slavery-like conditions.

99 (b) The Governor shall appoint the members of the task force, which shall include, at a minimum:

100 (1) The Attorney General or his designee;

101 (2) The Secretary of Public Safety or his designee;

102 (3) A representative from the Department of Labor and Industry;

103 (4) A representative from the Virginia Association of Chiefs of Police;

104 (5) A representative from the Virginia Sheriff's Association;

105 (6) The Superintendent of the State Police or his designee;

106 (7) A representative from the State Department of Health or a local health department;

107 (8) A representative from the Department of Social Services;

108 (9) A representative from the Virginia Association of Commonwealth's Attorneys; and

109 (10) Representatives from public and community organizations working with issues related to
110 trafficking or with victims of trafficking, including those representing communities
111 disproportionately affected by trafficking, those providing services to victims of violence, children
112 or runaways, and academic researchers with knowledge of subjects relevant to prevention or
113 punishment of trafficking.

114 (c) The task force shall carry out the following activities either directly or via one or more of its
115 constituent agencies as appropriate:

116 (1) Develop the State Plan for the Prevention of Trafficking in Persons.

117 (2) Coordinate the implementation of the plan.

118 (3) Work with existing mechanisms to enhance the collection and sharing of trafficking data
119 among government agencies, which data collection shall respect the privacy of victims of
120 trafficking.

(4) Work with existing mechanisms to enhance the sharing of information between agencies for the purposes of detecting individuals or organizations engaged in trafficking.

(5) Establish policies to enable state government to work more effectively with community and business organizations to prevent trafficking and provide assistance to U.S. citizen and foreign national victims.

(6) Review the existing services and facilities available to meet trafficking victims' needs and recommend ways that services might be better coordinated, including but not limited to health services, housing, education and job training, English as a second language classes, interpreting services, legal and immigration services, and victim compensation.

(7) Evaluate various approaches used by state and local governments to increase public awareness of the trafficking in persons, including U.S. citizen and foreign national victims of trafficking, and make recommendations regarding ways in which public awareness of trafficking can be increased in the Commonwealth.

(8) Submit an annual report of its findings and recommendations to the Governor, the Speaker of the House of Delegates and the President of the Senate on or before December 15.

3. That the Department of Criminal Justice Services shall, in cooperation with the State Police and local law enforcement authorities, collect and periodically publish statistical data on trafficking. Such data shall include:

(a) Numbers of arrests, prosecutions, and successful convictions of traffickers and those committing trafficking-related crimes (pimping, pandering, procuring, maintaining a brothel, child pornography, visa fraud, document fraud, and other crimes related to trafficking);

(b) Statistics on the number of victims, including nationality, age, and method of recruitment;

(c) Trafficking routes and patterns (states or country of origin, transit states or countries); and

(d) Method of transportation (car, boat, plane, foot), if any transportation took place.

4. That the Department of Criminal Justice Services shall provide and/or strengthen training for law enforcement and other relevant officials in addressing trafficking in persons. The Department of Criminal Justice Services shall seek the input from the Interagency Task Force on Trafficking in the preparation and presentation of such training. The training shall focus on:

(a) Methods used in identifying U.S. citizen and foreign national victims of trafficking, including preliminary interview techniques and appropriate questioning methods;

(b) Methods for prosecuting traffickers;

(c) Methods for protecting the rights of victims; and

(d) Methods for promoting the safety of victims, including, for example, the training of police to recognize U.S. citizen and foreign national victims of trafficking quickly.

5. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.