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**HOUSE BILL NO. 1827**

Offered January 10, 2007

Prefiled January 3, 2007

A *BILL to amend and reenact § 18.2-374.1 of the Code of Virginia and 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 Anti-Trafficking Act; penalties.*

Patron—Suit

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 18.2-374.1 of the Code of Virginia is amended and reenacted and 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 Anti-Trafficking Act.**§ 18.2-76.3. Definitions.*

*As used in this article, unless the context requires otherwise:*

*"Blackmail" is to be given its ordinary meaning and includes but is not limited to a threat to expose any secret tending to subject any person to hatred, contempt, or ridicule.*

*"Commercial sexual activity" means any sex act on account of which anything of value is given, promised to, or received 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.*

*"Forced labor or services" means labor or services, as defined in this section, that are performed or provided by another person and are obtained or maintained through an actor's (i) causing or threatening to cause serious harm to any person; (ii) physically restraining or threatening to restrain another person; (iii) abusing or threatening to abuse the law or legal process; (iv) 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; (v) blackmail; or (vi) causing or threatening to cause financial harm to any person.*

*"Labor" means work of economic or financial value.*

*"Maintain" means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type of service.*

*"Obtain" means, in relation to labor or services, to secure performance thereof.*

*"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 and includes commercial sexual activity and sexually explicit performances. Nothing in this provision shall be construed to legitimize or legalize prostitution.*

*"Sexually explicit visual material" shall have the same meaning as set forth in § 18.2-374.1.*

*"Trafficking victim" means a person subjected to the practices set forth in § 18.2-76.4 (involuntary servitude) or 18.2-76.5 (sexual servitude of a minor) or transported in violation of § 18.2-76.6 (trafficking of persons for forced labor or services).*

*§ 18.2-76.4. Involuntary servitude; penalties.*

*Any person who knowingly subjects, or attempts to subject, another person to forced labor or services (i) who causes or threatens to cause physical harm to any person, is guilty of a Class 3 felony; (ii) who physically restrains or threatens to physically restrain another person, is guilty of a Class 6 felony; (iii) who abuses or threatens to abuse the law or legal process, is guilty of a Class 5 felony; (iv) who knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person, is guilty of a Class 6 felony; and (v) who uses blackmail, or causes or threatens to cause financial harm to any person, is guilty of a Class 6 felony.*

*§ 18.2-76.5. Sexual servitude of a minor; penalties.*

*Any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, provide, or obtain by any means, another person under 18 years of age to engage in commercial sexual activity, the creation of sexually explicit visual material, or the*

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HB1827

59 *production of pornography, or causes or attempts to cause a minor to engage in commercial sexual*  
60 *activity, the creation of sexually explicit visual material, or the production of pornography, shall be*  
61 *punished as follows, subject to the provisions of § 18.2-76.7: (i) when the victim is age 15 or older but*  
62 *under the age of 18 years and there is no use of overt force or threat, by a Class 4 felony, (ii) when the*  
63 *victim is under the age of 15 years and there is no use of overt force or threat, by a Class 3 felony, and*  
64 *(iii) when overt force or threat is used, by imprisonment for not more than 25 years.*

65 *§ 18.2-76.6. Trafficking of persons for forced labor or services; penalty.*

66 *Any person who knowingly (i) recruits, entices, harbors, transports, provides, or obtains by any*  
67 *means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another*  
68 *person, intending or knowing that the person will be subjected to forced labor or services or (ii)*  
69 *benefits, financially or by receiving anything of value from participation in a venture that has engaged*  
70 *in an act described in violation of § 18.2-76.4 or 18.2-76.5 shall, subject to the provisions of*  
71 *§ 18.2-76.7, be imprisoned for no more than 15 years.*

72 *§18.2-76.7. Sentencing enhancements.*

73 *A. A violation of this article involving kidnapping or an attempt to kidnap shall be deemed a*  
74 *violation of § 18.2-48.*

75 *B. A violation of this article involving aggravated sexual abuse or the attempt to commit aggravated*  
76 *sexual abuse shall be deemed a violation of § 18.2-67.3.*

77 *§ 18.2-76.8. Restitution.*

78 *Restitution is mandatory under this article. In addition to any other amount of loss identified, the*  
79 *court shall order restitution including the greater of (i) the gross income or value to the defendant of*  
80 *the victim's labor or services or (ii) the value of the victim's labor as guaranteed under the minimum*  
81 *wage and overtime provisions of the Fair Labor Standards Act (29 U.S.C. § 201 et seq.) or the Virginia*  
82 *Minimum Wage Act (§ 40.1-28.8 et seq.).*

83 *§ 18.2-76.9. Assessment of victim protection needs.*

84 *A. The Office of the Attorney General, in consultation with the Department of Criminal Justice*  
85 *Services, shall, no later than July 1, 2008, issue a report to the General Assembly outlining how*  
86 *existing victim/witness laws and regulations respond to the needs of trafficking victims and suggest*  
87 *areas of improvement and modification.*

88 *B. The Secretary of Health and Human Resources, in consultation with the Office of the Attorney*  
89 *General, shall, no later than July 1, 2008, issue a report to the General Assembly outlining how existing*  
90 *social service programs respond or fail to respond to the needs of trafficking victims and the interplay*  
91 *of such existing programs with federally funded victim service programs, and suggesting areas of*  
92 *improvement and modification. Such inquiry shall include, but not be limited to, the ability of state*  
93 *programs and licensing bodies to recognize federal T nonimmigrant status for the purposes of benefits,*  
94 *programs, and licenses.*

95 *§ 18.2-374.1. Production, publication, sale, possession with intent to distribute, financing, etc., of*  
96 *sexually explicit items involving children; presumption as to age; severability.*

97 *A. For the purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, the term*  
98 *"sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film,*  
99 *digital image or similar visual representation which depicts sexual bestiality, a lewd exhibition of nudity,*  
100 *as nudity is defined in § 18.2-390, or sexual excitement, sexual conduct or sadomasochistic abuse, as*  
101 *also defined in § 18.2-390, or a book, magazine or pamphlet which contains such a visual representation.*  
102 *An undeveloped photograph or similar visual material may be sexually explicit material notwithstanding*  
103 *that processing or other acts may be required to make its sexually explicit content apparent.*

104 *B. A person shall be guilty of a Class 5 felony who:*

105 *1. Accosts, entices or solicits a person less than eighteen years of age with intent to induce or force*  
106 *such person to perform in or be a subject of sexually explicit visual material; or*

107 *2. Produces or makes or attempts or prepares to produce or make sexually explicit visual material*  
108 *which utilizes or has as a subject a person less than eighteen 18 years of age; or*

109 *3. Who knowingly Knowingly takes part in or participates in the filming, photographing or other*  
110 *reproduction of sexually explicit visual material by any means, including but not limited to*  
111 *computer-generated reproduction, which utilizes or has as a subject a person less than eighteen 18 years*  
112 *of age; or*

113 *4. Sells, gives away, distributes, electronically transmits, displays with lascivious intent, purchases, or*  
114 *possesses with intent to sell, give away, distribute, transmit or display with lascivious intent sexually*  
115 *explicit visual material which utilizes or has as a subject a person less than eighteen 18 years of age.*

116 *5. [Repealed.]*

117 *B1. [Repealed.]*

118 *C. A person shall be guilty of a Class 4 felony who knowingly finances or attempts or prepares to*  
119 *finance sexually explicit visual material which utilizes or has as a subject a person less than eighteen 18*  
120 *years of age.*

121 D. For the purposes of this section a person who is depicted as or presents the appearance of being  
122 less than ~~eighteen~~ 18 years of age in sexually explicit visual material is prima facie presumed to be less  
123 than ~~eighteen~~ 18 years of age.

124 E. The provisions of this section shall be severable and, if any of its provisions shall be held  
125 unconstitutional by a court of competent jurisdiction, then the decision of such court shall not affect or  
126 impair any of the remaining provisions.

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

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HB1827