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SENATE BILL NO. 815

Offered January 10, 2007

Prefiled January 5, 2007

A *BILL to amend and reenact § 18.2-513 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, and by adding in Chapter 22.2 of Title 19.2 a section numbered 19.2-386.32, relating to the Human Anti-Trafficking Act; penalties.*

Patron—Cuccinelli

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-513 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, and by adding in Chapter 22.2 of Title 19.2 a section numbered 19.2-386.32 as follows:

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

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

"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his personal services or those of a person under his 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 or if the principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.

"Extortion" is to be given its ordinary meaning pursuant to § 18.2-59.

"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.

"Labor" means work of economic or financial value.

"Minor" refers to any person less than 18 years of age.

"Person" includes an individual, corporation, partnership, association, 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.

"Sex act" means any touching of another person for the purpose of gratifying sexual desire of any person. It includes touching of the person as well as touching by the person, whether directly or through clothing.

"Sexually explicit performance" means an act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether live or public, private, photographed, recorded, or videotaped.

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

§ 18.2-76.4. Trafficking in persons.

A. Any person who knowingly recruits, entices, solicits, isolates, harbors, transports, or provides, or so attempts, another person knowing that the person will be subject to crimes under subsection B or C is guilty of a Class 4 felony.

B. Any person who knowingly recruits, entices, solicits, isolates, harbors, transports, provides any minor, or so attempts, for the purposes of commercial sex acts or sexually explicit performance, or subjects any minor, or so attempts, through any means is guilty of a Class 2 felony.

C. Any person who knowingly subjects a person to commercial sex acts or sexually explicit performance, or labor or services, or so attempts, through use of any of the listed means is guilty of a Class 2 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

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59 passport or other immigration document or any other actual or purported government identification
60 document, of another person;

61 5. Extortion;

62 6. Deception or fraud;

63 7. Debt bondage;

64 8. Causing or threatening to cause financial harm to any person;

65 9. Facilitating or controlling a victim's access to an addictive controlled substance; or

66 10. Using any scheme, plan, or pattern intended to cause any persons to believe that, if the person
67 did not perform such labor, services, acts, or performances, that person or another person would suffer
68 serious harm or physical restraint.

69 D. Any person who knowingly benefits, financially or by receiving anything of value, from
70 participation in an act described in subsection A, B, or C is guilty of a Class 4 felony.

71 E. If the violation of this article involves abduction or an attempt to abduct, aggravated sexual
72 assault or the attempt to commit aggravated sexual assault, or an attempt to kill, or if death results, the
73 defendant shall be imprisoned for any terms of years or life.

74 The following shall be additional sentencing considerations within statutory maximums.

75 1. If, pursuant to a violation of this article, a victim suffered bodily injury, the sentence may be
76 enhanced as follows:

77 a. Bodily injury, an additional three years of imprisonment;

78 b. Serious bodily injury, an additional seven years of imprisonment;

79 c. Permanent or life-threatening bodily injury, an additional 10 years of imprisonment; and

80 d. If death results, defendant shall be sentenced pursuant to the murder provisions of Article 1
81 (§ 18.2-30 et seq.) of Chapter 4 of this title.

82 2. In determining sentences within statutory maximums, the sentencing court should take into account
83 the time in which the victim was subject to the crime of subsection C with increased penalties for cases
84 in which the victim was held for between 180 days and one year, and further increased penalties for
85 cases in which the victim was held for more than one year.

86 3. In determining sentences within statutory maximums, the sentencing court should take into account
87 the number of victims and may provide for substantially increased sentences in cases involving more
88 than two victims.

89 § 18.2-76.5. Criminal liability of business entities.

90 A. Any business entity, including a corporation, partnership, association, government body, municipal
91 corporation, or any other legal entity that knowingly aids or participates in the trafficking in persons
92 under § 18.2-76.4 shall be criminally liable for the offense and shall be subject to a fine or loss of
93 business license in the Commonwealth or both.

94 B. If a business entity is convicted of violating any section of this article, the court may when
95 appropriate:

96 1. Order its dissolution or reorganization;

97 2. Order the suspension or revocation of any license, permit, or prior approval granted to it by a
98 state or local government agency;

99 3. Order the surrender of its charter if it is organized under the Virginia law or the revocation of its
100 certificate to conduct business in the Commonwealth if it is not organized under the Virginia law; or

101 4. Order a fine not exceeding the greater of \$50,000 or an amount that is three times the economic
102 benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with
103 respect to both fine and imprisonment for any subsequent conviction of the same person.

104 § 18.2-76.6. No victim liability for criminal activity.

105 A. Any plea of guilty entered under any provision of this article by an offender shall automatically
106 entitle the victim of trafficking in persons to all benefits, rights, and compensation under this article,
107 notwithstanding existing laws.

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

111 § 18.2-76.7. Age of consent and mistake as to age are not defenses to trafficking.

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

114 B. Mistake as to the victim's age is not a defense to a criminal violation under this article.

115 C. Victim's connection by blood or marriage to a defendant in the case or to anyone involved in
116 trafficking of the victim is not a defense to a criminal violation under this article.

117 D. The initial consent of or permission by a trafficking victim or anyone else on the victim's behalf
118 to commercial sex acts or sexually explicit performance, labor, or services is not a defense to a criminal
119 violation under this article.

120 § 18.2-76.8. Restitution.

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

1. Costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion;

2. Costs of necessary transportation, temporary housing, and child care, at the court's discretion;

3. Reasonable attorney fees and other costs of representation, including victim advocate fees;

4. Return of property, costs of damage to property, or full value of property if destroyed or damaged beyond repair;

5. Compensation for emotional distress, pain, and suffering;

6. Expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his associates, including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim; and

7. Any other compensable losses suffered by the victim.

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

C. If the victim dies as a result of being trafficked, a surviving spouse of the victim is eligible for restitution. If no surviving spouse exists, restitution shall be paid to the victim's children and their descendants. If there be none such, any such restitution collected shall be deposited to the Criminal Injuries Compensation Fund pursuant to § 19.2-305.1. Any person named in this provision may not receive any funds from restitution if he benefited or engaged in criminal conduct of this article.

§ 18.2-76.9. Civil liability.

A. An action for injunctive relief or civil damages or both shall lie for any person who is a victim of human trafficking.

B. Any aggrieved party who prevails in an action brought under this section shall be entitled to damages, including punitive damages and, in the discretion of the court, costs of litigation and reasonable attorney fees. Treble damages shall be awarded on proof of actual damages where defendant's acts were willful and malicious.

C. A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant's inducing the plaintiff to delay the filing of the action or placing the plaintiff under duress.

§ 18.2-513. Definitions.

As used in this chapter, the term:

"Criminal street gang" shall be as defined in § 18.2-46.1.

"Enterprise" includes any of the following: sole proprietorship, partnership, corporation, business trust, criminal street gang; or other group of three or more individuals associated for the purpose of criminal activity.

"Proceeds" shall be as defined in § 18.2-246.2.

"Racketeering activity" means to commit, attempt to commit, conspire to commit, or to solicit, coerce, or intimidate another person to commit two or more of the following offenses: Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4 of this title, § 18.2-460; a felony offense of §§ 10.1-1455, 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, 18.2-35, Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of this title, §§ 18.2-47, 18.2-48, 18.2-48.1, 18.2-49, 18.2-51, 18.2-51.2, 18.2-52, 18.2-53, 18.2-55, 18.2-58, 18.2-76.4, 18.2-76.5, 18.2-77, 18.2-79, 18.2-80, 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, 18.2-95, Article 4 (§ 18.2-111 et seq.) of Chapter 5 of this title, Article 1 (§ 18.2-168 et seq.) of Chapter 6 of this title, §§ 18.2-178, 18.2-186, Article 6 (§ 18.2-191 et seq.) of Chapter 6 of this title, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of this title, Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title, §§ 18.2-279, 18.2-286.1, 18.2-289, 18.2-300, 18.2-308.2, 18.2-308.2:1, 18.2-328, 18.2-355, 18.2-357, 18.2-369, 18.2-374.1, Article 8 (§ 18.2-433.1 et seq.) of Chapter 9 of this title, Article 1 (§ 18.2-434 et seq.) of Chapter 10 of this title, Article 2 (§ 18.2-438 et seq.) of Chapter 10 of this title, Article 3 (§ 18.2-446 et seq.) of Chapter 10 of this title, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of this title, §§ 18.2-516, 32.1-314, or § 58.1-1017; or any substantially similar offenses under the laws of any other state, the District of Columbia, the United States or its territories.

§ 19.2-386.32. Seizure and forfeiture of property used in connection with human trafficking.

A. All property, including but not limited to money, valuables, real property, and vehicles, of persons convicted of § 18.2-76.4 that was used or intended to be used or was obtained in the course of the crime of human trafficking and any benefits gained from the proceeds of such crime shall be subject to lawful seizure by a law-enforcement officer and forfeiture to the Commonwealth pursuant to Chapter 22 (§ 19.2-369 et seq.) of this title by order of the court in which a conviction under § 18.2-76.4 is

182 *obtained, according to the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title,*
183 *applied mutatis mutandis.*

184 *B. Notwithstanding the provisions of § 19.2-381, any assets seized shall first be used to pay*
185 *restitution to trafficking victims and subsequently any damages awarded to victims in the civil action.*

186 *C. A forfeiture under this section shall not extinguish the rights of any person without knowledge of*
187 *the illegal use of the property who (i) is the lawful owner or (ii) has a valid and perfected lien on the*
188 *property.*

189 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
190 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
191 **be determined for periods of imprisonment in state adult correctional facilities and cannot be**
192 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**