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HOUSE BILL NO. 1100

Offered January 11, 2006

Prefiled January 11, 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 18.2-76.6, creating the Human Trafficking Act; penalties.*

Patrons—Griffith, Albo, Athey, Callahan, Cosgrove, Fralin, Frederick, Gear, Gilbert, Hull, Hurt, Kilgore, Landes, Lingamfelter, May, McQuigg, O'Bannon, Rapp, Rust, Saxman, Suit, Tata, Wardrup, Ware, R.L., Welch and Wright

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That 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 18.2-76.6 as follows:

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

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

"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 or entering into or performing an agreement of employment upon which no action may be brought or maintained.

"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.

"Trafficking victim" means a person subjected to the practices set forth in § 18.2-76.4 and subsection A of § 18.2-76.5.

§ 18.2-76.4. Involuntary servitude; penalties.

Any person who knowingly subjects, or attempts to subject, another person to forced labor or services and who (i) causes or threatens to cause physical harm to any person is guilty of a Class 3 felony; (ii) physically restrains or threatens to physically restrain another person is guilty of a Class 4 felony; (iii) abuses or threatens to abuse the law or legal process is guilty of a Class 5 felony; (iv) 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; or (v) uses extortion, or causes or threatens to cause financial harm to any person, is guilty of a Class 6 felony.

§ 18.2-76.5. Trafficking of persons for forced labor or services; penalty.

A. Any person who knowingly (i) recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another person, intending or knowing that the person will be subjected to forced labor or services or (ii) benefits financially or receives anything of value from participation in an act in violation of § 18.2-76.4 is guilty of a Class 3 felony.

B. If, pursuant to a violation of subsection A, a trafficking victim suffered bodily injury, the sentence shall include a mandatory minimum term of incarceration of one year. If the victim suffered serious bodily injury, the sentence shall include a mandatory minimum term of incarceration of two years. If the victim suffered permanent serious bodily injury or life-threatening bodily injury, the sentence shall include a mandatory minimum term of incarceration of three years. If the victim was held in servitude for more than 180 days, the sentence shall include a mandatory minimum term of incarceration of one

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57 additional year.

58 § 18.2-76.6. Restitution.

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

64 2. That the Office of the Attorney General, in consultation with the Department of Criminal
65 Justice Services, shall, no later than July 1, 2007, issue a report to the General Assembly outlining
66 how existing victim/witness laws and regulations respond to the needs of trafficking victims and
67 suggesting areas of improvement and modification.

68 3. That the Secretary of Health and Human Resources, in consultation with the Office of the
69 Attorney General, shall, no later than July 1, 2007, issue a report to the General Assembly
70 outlining how existing social service programs respond or fail to respond to the needs of
71 trafficking victims, and the interplay of such existing programs with federally funded victim
72 service programs, and suggesting areas of improvement and modification. Such inquiry shall
73 include, but not be limited to, the ability of state programs and licensing bodies to recognize
74 federal T nonimmigrant status for the purposes of benefits, programs, and licenses.

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