ENGROSSED HOUSE
BILL NO. 2561

By: Cooksey, Nations, Kern and Ortega of the House

and

Brown of the Senate

An Act relating to human trafficking; amending Sections 1 and 2, Chapter 134, O.S.L. 2008 (21 O.S. Supp. 2009, Sections 748 and 748.2), which relate to human trafficking penalties and court proceedings; adding and modifying definitions; prohibiting human trafficking; modifying what constitutes unlawful human trafficking; increasing age of certain victim for purposes of punishment; authorizing victims to bring civil actions for actual and punitive damages; allowing reasonable attorney fees in certain civil action; allowing civil action without criminal action; setting statute of limitations for certain recovery in civil action; amending 22 O.S. 2001, Section 1402, which relates to the Oklahoma Corrupt Organizations Prevention Act; adding crime to racketeering activity definition; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 1, Chapter 134, O.S.L. 2008 (21 O.S. Supp. 2009, Section 748), is amended to read as follows:

Section 748. A. As used in Sections 748 and 748.2 of this ~~act~~ title:

1. "Coercion" means compelling, forcing or intimidating a person to act by:

a. threats of harm or physical restraint against any person,

b. any act, scheme, plan, or pattern intended to cause a person to believe that performing, or failing to perform, an act would result in serious physical, financial, or emotional harm or distress to or physical restraint against any person,

c. the abuse or threatened abuse of the law or legal process,

d. knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport, labor or immigration document, or other government identification document, including but not limited to a driver license or birth certificate, of another person,

e. facilitating or controlling a person's access to any addictive or controlled substance other than for legal medical purposes,

f. blackmail,

g. demanding or claiming money, goods, or any other thing of value from or on behalf of a prostituted person

where such demand or claim arises from or is directly related to the act of prostitution,

h. determining, dictating or setting the times at which another person will be available to engage in an act of prostitution with a third party,

i. determining, dictating or setting the places at which another person will be available for solicitation of, or to engage in, an act of prostitution with a third party, or

j. determining, dictating or setting the places at which another person will reside for purposes of making such person available to engage in an act of prostitution with a third party;

2. "Exploited sex" means any form of commercial sexual activity such as sexually explicit performances, prostitution, participation in the production of pornography, performance in a strip club, or exotic dancing or display;

3. "Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her 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;

4. "Human trafficking" ~~refers to~~ means modern-day slavery that includes, but is not limited to, extreme exploitation and the denial of freedom or liberty of an individual for purposes of deriving benefit from the exploited sex act or labor of that individual;

~~2.~~ 5. "Human trafficking for ~~forced~~ labor" ~~includes, but is not limited to, forced labor in households, agricultural fields, sweatshops, and any other workplace; and~~ means:

a. recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, another person through deception, force, fraud, threat or coercion or for purposes of engaging the person in labor, or

b. benefiting, financially or by receiving anything of value, from participation in a venture that has engaged in an act of trafficking for labor;

~~3.~~ 6. "Human trafficking for ~~forced sexual exploitation~~ exploited sex" ~~includes, but is not limited to, all forms of forced commercial sexual activity such as forced sexually explicit performances, forced prostitution, forced participation in the production of pornography, forced performance in strip clubs and forced exotic dancing or display~~ means:

a. recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, another person through deception, force, fraud, threat

or coercion for purposes of engaging the person in an exploited sex act, or

b. any pecuniary benefit derived either financially or by receiving anything of value from an act of trafficking for exploited sex;

7. "Legal process" means the criminal law, the civil law, or the regulatory system of the federal government, any state, territory, district, commonwealth, or trust territory therein, and any foreign government or subdivision thereof and includes legal civil actions, criminal actions, and regulatory petitions or applications; and

8. "Minor" means an individual under eighteen (18) years of age.

B. ~~A person commits the crime of~~ It shall be unlawful to knowingly engage in human trafficking ~~for forced labor or forced sexual exploitation if the person recruits, harbors, transports or obtains a person through the use of force, fraud or coercion by:~~

~~1. Threats of serious harm or physical restraint against that person or another person;~~

~~2. Destroying, concealing, removing, confiscating, or possessing any passport, immigration documents, or other government identification document;~~

~~3. Abuse or threatened abuse of the law or legal process; or~~

~~4. Means of any scheme, plan or pattern intended to cause the person to believe that the person or another person would suffer serious harm or physical restraint or if the person benefits, financially or by receiving anything of value, from participation in a venture that has engaged in an act of human trafficking~~.

C. Any person violating the provisions of this section shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not less than five (5) years, or by a fine of not more than Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment. Any person violating the provisions of this section where the victim of the offense is under ~~fourteen (14)~~ eighteen (18) years of age at the time of the offense shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not less than ten (10) years, or by a fine of not more than Twenty Thousand Dollars ($20,000.00), or by both such fine and imprisonment. The court shall also order the defendant to pay restitution to the victim as provided in Section 991f of Title 22 of the Oklahoma Statutes.

D. It is an affirmative defense to prosecution for a criminal offense that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking.

SECTION 2. AMENDATORY Section 2, Chapter 134, O.S.L. 2008 (21 O.S. Supp. 2009, Section 748.2), is amended to read as follows:

Section 748.2 A. Human trafficking victims shall:

1. Be housed in an appropriate shelter as soon as practicable;

2. Not be detained in facilities inappropriate to their status as crime victims;

3. Not be jailed, fined, or otherwise penalized due to having been trafficked;

4. Receive prompt medical care, mental health care, food, and other assistance, as necessary;

5. Have access to legal assistance, information about their rights, and translation services, as necessary; and

6. Be provided protection if the safety of the victim is at risk or if there is a danger of additional harm by recapture of the victim by a trafficker, including:

a. taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals, and

b. ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.

B. Any person ~~who is a victim of human trafficking~~ aggrieved by a violation of subsection B of Section 748 of this title may ~~file~~

bring a civil action against the ~~alleged perpetrator or perpetrators in state court~~ person or persons who committed the violation to recover actual and punitive damages and reasonable attorney fees. ~~The court may award actual damages, punitive damages, reasonable attorney fees, and other costs reasonably incurred. Any civil action filed pursuant to this subsection shall be stayed during the pendency of any criminal~~ A criminal case or prosecution is not a necessary precedent to the civil action ~~arising out of the same occurrence in which the claimant is the victim~~. The statute of limitations for the cause of action shall not commence until the latter of the emancipation of the victim from the defendant or the twenty-first birthday of the victim.

SECTION 3. AMENDATORY 22 O.S. 2001, Section 1402, is amended to read as follows:

Section 1402. As used in the Oklahoma Corrupt Organizations Prevention Act:

1. "Beneficial interest" includes:

a. the interest of a person as a beneficiary pursuant to a trust, in which the trustee holds legal title to personal or real property, or

b. the interest of a person as a beneficiary pursuant to any other arrangement under which any other person holds legal title to personal or real property for the benefit of such person.

The term beneficial interest does not include the interest of a stockholder in a corporation or the interest of a partner in either a general or limited partnership;

2. "Enterprise" includes any individual, sole proprietorship, partnership, corporation, trust, governmental entity, or other legal entity, or any union, association, unincorporated association or group of persons, associated in fact although not a legal entity, involved in any lawful or unlawful project or undertaking;

3. "Innocent party" includes bona fide purchasers and victims;

4. "Lien notice" means the notice pursuant to the provisions of Section 1412 of this title;

5. "Pattern of racketeering activity" means two or more occasions of conduct:

a. that include each of the following:

(1) constitute racketeering activity,

(2) are related to the affairs of the enterprise,

(3) are not isolated, and

(4) are not so closely related to each other and connected in point of time and place that they constitute a single event, and

b. where each of the following is present:

(1) at least one of the occasions of conduct occurred after November 1, 1988,

(2) the last of the occasions of conduct occurred within three (3) years, excluding any period of imprisonment served by any person engaging in the conduct, of a prior occasion of conduct, and

(3) for the purposes of Section 1403 of this title each of the occasions of conduct constituted a felony pursuant to the laws of this state;

6. "Pecuniary value" means:

a. anything of value in the form of money, a negotiable instrument, or a commercial interest, or anything else, the primary significance of which is economic advantage, or

b. any other property or service that has a value in excess of One Hundred Dollars ($100.00);

7. "Person" means any individual or entity holding or capable of holding a legal or beneficial interest in property;

8. "Personal property" includes any personal property, or any interest in such personal property, or any right, including bank accounts, debts, corporate stocks, patents or copyrights. Personal property and beneficial interest in personal property shall be deemed to be located where the trustee, the personal property, or the instrument evidencing the right is located;

9. "Principal" means a person who engages in conduct constituting a violation of the Oklahoma Corrupt Organizations

Prevention Act or who is legally accountable for the conduct of another who engages in a violation of the Oklahoma Corrupt Organizations Prevention Act;

10. "Racketeering activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any conduct which is chargeable or indictable as constituting a felony violation of one or more of the following provisions of the Oklahoma Statutes, regardless of whether such act is in fact charged or indicted:

a. relating to homicide pursuant to the provisions of Sections 651, 652, 653, 701.7, 701.8, 701.16, 711 or 716 of Title 21 of the Oklahoma Statutes or relating to concealment of homicidal death pursuant to the provisions of Section 543 of Title 21 of the Oklahoma Statutes,

b. relating to kidnapping pursuant to the provisions of Sections 741, 745, 891 or 1119 of Title 21 of the Oklahoma Statutes,

c. relating to sex offenses pursuant to the provisions of ~~Sections~~ Section 886, 888, 1021, 1021.2, 1021.4, 1024.2, ~~1040.51,~~ 1111, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes,

d. relating to bodily harm pursuant to the provisions of ~~Sections~~ Section 645, 650, 650.2, 1289.16, 1302, 1303 or 1767.1 of Title 21 of the Oklahoma Statutes,

e. relating to theft, where the offense constitutes a felony, pursuant to the provisions of ~~Sections~~ Section 1704, 1707, 1708, 1709, 1710, 1711, 1713, 1716, 1719, 1720, 1721, 1722, 1723 or 1731 of Title 21 of the Oklahoma Statutes,

f. relating to forgery pursuant to the provisions of ~~Sections~~ Section 1561, 1562, 1571, 1572, 1574, 1575, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591 or 1593 of Title 21 of the Oklahoma Statutes,

g. relating to robbery pursuant to the provisions of ~~Sections~~ Section 797, 800 or 801 of Title 21 of the Oklahoma Statutes,

h. relating to burglary pursuant to the provisions of ~~Sections~~ Section 1431, 1435 or 1437 of Title 21 of the Oklahoma Statutes,

i. relating to arson pursuant to the provisions of ~~Sections~~ Section 1368, 1401, 1402, 1403 or 1404 of Title 21 of the Oklahoma Statutes,

j. relating to use or possession of a firearm or other offensive weapon while committing or attempting to

commit a felony pursuant to the provisions of ~~Sections~~ Section 1287, 1289.20 or 1289.21 of Title 21 of the Oklahoma Statutes,

k. relating to gambling pursuant to the provisions of ~~Sections~~ Section 941, 942, 944, 945, 946, 948, 954, 956, 957, ~~962,~~ 969, 970, 971, 981, 982, 983, 984, 985, 986, 987, 991~~,~~ or 992~~, 995.7, 995.8, 995.11 or 995.12~~ of Title 21 of the Oklahoma Statutes,

l. relating to bribery in contests pursuant to the provisions of ~~Sections~~ Section 399 or 400 of Title 21 of the Oklahoma Statutes,

m. relating to interference with public officers pursuant to the provisions of ~~Sections~~ Section 434, 436, 437, 438, 439, 440, 441, 443, 444, 521, 522, 532, 540, 543, 545 or 546 of Title 21 of the Oklahoma Statutes,

n. relating to interference with judicial procedure pursuant to the provisions of ~~Sections~~ Section 388, 453, 455, 456, 491, 496 or 504 of Title 21 of the Oklahoma Statutes,

o. relating to official misconduct pursuant to the provisions of ~~Sections~~ Section 380, 381, 382, 383, 384, 385, 386, 389, 390, 950 or 976 of Title 21 of the Oklahoma Statutes,

p. relating to the Uniform Controlled Dangerous Substances Act, where the offense constitutes a felony, pursuant to the provisions of Section 2-101 et seq. of Title 63 of the Oklahoma Statutes,

q. relating to automobile theft pursuant to the provisions of ~~Sections~~ Section 4-102, 4-103, 4-107, 4-108, 4-109 or 4-110 of Title 47 of the Oklahoma Statutes,

r. relating to embezzlement pursuant to the provisions of Section 1412 of Title 6 of the Oklahoma Statutes, Section 641 of Title 19 of the Oklahoma Statutes, ~~Sections~~ Section 341, 531~~,~~ or 1451~~, 1452, 1453, 1454, 1455, 1456, 1463 or 1464~~ of Title 21 of the Oklahoma Statutes, Section 163.4 of Title 37 of the Oklahoma Statutes, ~~Section 25 of Title 41 of the Oklahoma Statutes,~~ Section 114 of Title 64 of the Oklahoma Statutes or ~~Sections 506 or~~ Section 1361 of Title 68 of the Oklahoma Statutes,

s. relating to extortion, where the offense constitutes a felony, pursuant to the provisions of ~~Sections~~ Section 1304, 1481, 1482, 1485, 1486 or 1488 of Title 21 of the Oklahoma Statutes,

t. relating to fraud, where the offense constitutes a felony, pursuant to the provisions of ~~Sections~~ Section

208.6, 208.7 or 208.8 of Title 3A of the Oklahoma Statutes, Section 552.18 of Title 18 of the Oklahoma Statutes, ~~Sections~~ Section 358, 1411, 1412, 1413, 1414, 1415, 1416, 1503, 1521, 1541.1, 1541.3, 1542, 1543, 1544, 1550.2, 1550.22, 1550.23, 1550.24, 1550.25, 1550.26, 1550.27, 1550.28, 1550.29, 1550.30, 1550.31, 1550.32, 1632, 1635 or 1662 of Title 21 of the Oklahoma Statutes, Section 243 of Title 56 of the Oklahoma Statutes, or Section 604 of Title 62 of the Oklahoma Statutes,

u. relating to conspiracy, where the offense constitutes a felony, pursuant to the provisions of ~~Sections~~ Section 421, 422 or 424 of Title 21 of the Oklahoma Statutes,

v. relating to prostitution, pornography or obscenity pursuant to the provisions of Sections 1021, 1040.52, 1081, 1085, 1086, 1087 or 1088 of Title 21 of the Oklahoma Statutes,

w. relating to the Oklahoma Alcoholic Beverage Control Act, where the offense constitutes a felony, pursuant to the provisions of Section 506.1 et seq. of Title 37 of the Oklahoma Statutes,

x. relating to the Oklahoma Uniform Securities Act of 2004, where the offense constitutes a felony, pursuant

to the provisions of Section ~~1 et seq.~~ 1-101 through 1-701 of Title 71 of the Oklahoma Statutes, or

y. relating to human trafficking or trafficking in children pursuant to the provisions of Sections 748, 866 and 867 of Title 21 of the Oklahoma Statutes;

In addition, "racketeering activity" may be proven by proof of engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the above described conduct within another state, regardless of whether said conduct is chargeable or indictable in that state.

11. "Real property" means any real property or any interest in real property, including any lease of, or mortgage upon real property. Real property and beneficial interest in real property shall be deemed to be located where the real property is located;

12. "Trustee" includes trustees, a corporate as well as a natural person and a successor or substitute trustee in accordance with the Oklahoma Trust Act, Section 175.1 et seq. of Title 60 of the Oklahoma Statutes; and

13. "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is unenforceable in the courts of Oklahoma, because the debt was incurred or contracted in violation of a law relating to the business of gambling activity or in violation of federal or state law but does not include any debt owed to a bank, savings and loan association,

credit union or supervised lender licensed by the Oklahoma Administrator of Consumer Credit or to any debt referred or assigned to a debt collection agency, which referral or assignment is accepted in good faith by the debt collection agency as a debt collectible under the Uniform Commercial Code or other laws of this state and enforceable in the courts of this state.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 2nd day of March, 2010.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2010.

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Presiding Officer of the Senate