

House Amendments to Senate Bill No. 2305

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 2

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

8 **SECTION 1.** Section 97-3-54.1, Mississippi Code of 1972, is
9 amended as follows:

10 97-3-54.1. (1) (a) A person who coerces, recruits,
11 entices, harbors, transports, provides, solicits or obtains by any
12 means, or attempts to coerce, recruit, entice, harbor, transport,
13 provide, solicit or obtain by any means, another person, intending
14 or knowing that the person will be subjected to forced labor or
15 services, for the purpose of having the person subjected to forced
16 labor or services or who benefits, whether financially or by
17 receiving anything of value from participating in an enterprise
18 that he knows or reasonably should have known has engaged in such
19 acts, shall be guilty of the crime of human-trafficking.

20 (b) A person who knowingly purchases the forced labor
21 or services of a trafficked person or who otherwise knowingly
22 subjects, or attempts to subject, another person to forced labor
23 or services or who benefits, whether financially or by receiving
24 anything of value from participating in an enterprise that he

25 knows or reasonably should have known has engaged in such acts,
26 shall be guilty of the crime of procuring involuntary servitude.

27 (c) A person who knowingly subjects, or attempts to
28 subject, or who recruits, entices, harbors, transports, provides,
29 solicits or obtains by any means, or attempts to recruit, entice,
30 harbor, transport, provide, solicit or obtain by any means, a
31 minor, knowing that the minor will engage or for the purpose of
32 having the minor engage in commercial sexual activity, sexually
33 explicit performance, or the production of sexually oriented
34 material, or causes or attempts to cause a minor to engage in
35 commercial sexual activity, sexually explicit performance, or the
36 production of sexually oriented material, shall be guilty of
37 procuring sexual servitude of a minor and shall be punished by
38 commitment to the custody of the Department of Corrections for not
39 less than * * * twenty (20) years nor more than life in prison, or
40 by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor
41 more than Five Hundred Thousand Dollars (\$500,000.00), or both.
42 It is not a defense in a prosecution under this section that a
43 minor consented to engage in the commercial sexual activity,
44 sexually explicit performance, or the production of sexually
45 oriented material, or that the defendant reasonably believed that
46 the minor was eighteen (18) years of age or older.

47 (2) If the victim is not a minor, a person who is convicted
48 of an offense set forth in subsection (1)(a) or (b) of this
49 section shall be committed to the custody of the Department of
50 Corrections for not less than two (2) years nor more than twenty

51 (20) years, or by a fine of not less than Ten Thousand Dollars
52 (\$10,000.00) nor more than One Hundred Thousand Dollars
53 (\$100,000.00), or both. If the victim of the offense is a minor,
54 a person who is convicted of an offense set forth in subsection
55 (1)(a) or (b) of this section shall be committed to the custody of
56 the Department of Corrections for not less than * * * twenty (20)
57 years nor more than * * * life imprisonment, or by a fine of not
58 less than * * * Fifty Thousand Dollars (\$50,000.00) nor more
59 than * * * Five Hundred Thousand Dollars (\$500,000.00), or both.

60 (3) An enterprise may be prosecuted for an offense under
61 this chapter if:

62 (a) An agent of the enterprise knowingly engages in
63 conduct that constitutes an offense under this chapter while
64 acting within the scope of employment and for the benefit of the
65 entity.

66 (b) An employee of the enterprise engages in conduct
67 that constitutes an offense under this chapter and the commission
68 of the offense was part of a pattern of illegal activity for the
69 benefit of the enterprise, which an agent of the enterprise either
70 knew was occurring or recklessly disregarded, and the agent failed
71 to take effective action to stop the illegal activity.

72 (c) It is an affirmative defense to a prosecution of an
73 enterprise that the enterprise had in place adequate procedures,
74 including an effective complaint procedure, designed to prevent
75 persons associated with the enterprise from engaging in the

76 unlawful conduct and to promptly correct any violations of this
77 chapter.

78 (d) The court may consider the severity of the
79 enterprise's offense and order penalties, including: (i) a fine
80 of not more than One Million Dollars (\$1,000,000.00); (ii)
81 disgorgement of profit; and (iii) debarment from government
82 contracts. Additionally, the court may order any of the relief
83 provided in Section 97-3-54.7.

84 (4) In addition to the mandatory reporting provisions
85 contained in Sections 43-21-353 and 97-5-51, any person who has
86 reasonable cause to suspect that a minor under the age of eighteen
87 (18) is a trafficked person shall immediately make a report of the
88 suspected child abuse or neglect to the Department of Human
89 Services and to the Statewide Human Trafficking Coordinator. The
90 Department of Human Services shall then immediately notify the law
91 enforcement agency in the jurisdiction where the suspected child
92 abuse or neglect occurred as required in Section 43-21-353, and
93 the department shall also commence an initial investigation into
94 the suspected abuse or neglect as required in Section 43-21-353.
95 A minor who has been identified as a victim of trafficking shall
96 not be liable for criminal activity in violation of this section.

97 (5) It is an affirmative defense in a prosecution under this
98 act that the defendant:

99 (a) Is a victim; and

100 (b) Committed the offense under a reasonable
101 apprehension created by a person that, if the defendant did not

102 commit the act, the person would inflict serious harm on the
103 defendant, a member of the defendant's family, or a close
104 associate.

105 **SECTION 2.** Section 97-3-54.4, Mississippi Code of 1972, is
106 amended as follows:

107 97-3-54.4. For the purposes of the Mississippi Human
108 Trafficking Act the following words and phrases shall have the
109 meanings ascribed herein unless the context clearly requires
110 otherwise:

111 (a) "Act" or "this act" means the Mississippi Human
112 Trafficking Act.

113 (b) "Actor" means a person who violates any of the
114 provisions of Sections 97-3-54 through 97-3-54.4.

115 (c) "Blackmail" means obtaining property or things of
116 value of another by threatening to (i) inflict bodily injury on
117 anyone; or (ii) commit any other criminal offense.

118 (d) "Coerce" or "coercion" means:

119 (i) Causing or threatening to cause bodily harm to
120 any person, physically restraining or confining any person, or
121 threatening to physically restrain or confine any person;

122 (ii) Exposing or threatening to expose any fact or
123 information or disseminating or threatening to disseminate any
124 fact or information that would tend to subject a person to
125 criminal or immigration proceedings, hatred, contempt or ridicule;

126 (iii) Destroying, concealing, removing,
127 confiscating or possessing any actual or purported passport or

128 other immigration document, or any other actual or purported
129 government identification document of any person;

130 (iv) Providing a controlled substance to a person
131 for the purpose of compelling the person to engage in labor or
132 sexual servitude against the person's will;

133 (v) Causing or threatening to cause financial harm
134 to any person or using financial control over any person;

135 (vi) Abusing or threatening to abuse a position of
136 power, the law, or legal process;

137 (vii) Using blackmail;

138 (viii) Using an individual's personal services as
139 payment or satisfaction of a real or purported debt when: 1. the
140 reasonable value of the services is not applied toward the
141 liquidation of the debt; 2. the length of the services is not
142 limited and the nature of the services is not defined; 3. the
143 principal amount of the debt does not reasonably reflect the value
144 of the items or services for which the debt is incurred; or 4. the
145 individual is prevented from acquiring accurate and timely
146 information about the disposition of the debt; or

147 (ix) Using any scheme, plan or pattern of conduct
148 intended to cause any person to believe that, if the person did
149 not perform the labor or services, that the person or another
150 person would suffer serious harm or physical restraint.

151 (e) "Commercial sexual activity" means any sex act,
152 sexually explicit performance or production of sexually oriented
153 material on account of which anything of value is given to,

154 promised to, or received by any person or for quid pro quo
155 exchange of property or exchange for any other purpose.

156 (f) "Enterprise" means any individual, sole
157 proprietorship, partnership, corporation, union or other legal
158 entity, or any association or group of individuals associated in
159 fact regardless of whether a legal entity has been formed pursuant
160 to any state, federal or territorial law. It includes illicit as
161 well as licit enterprises and governmental as well as other
162 entities.

163 (g) "Financial harm" includes, but is not limited to,
164 extortion as defined by Section 97-3-82, Mississippi Code of 1972,
165 or violation of the usury law as defined by Chapter 17, Title
166 75, * * * Mississippi Code of 1972.

167 (h) "Forced labor or services" means labor or services
168 that are performed or provided by another person and are obtained
169 or maintained through coercion.

170 (i) "Human trafficking" means and includes the crimes
171 of "human trafficking", "procuring involuntary servitude" and
172 "procuring sexual servitude of a minor" as provided in subsection
173 (1) of Section 97-3-54.1, and "sex trafficking" and "sex
174 trafficking of a minor" as provided in this Section 97-3-54.4.

175 (* * *j) "Labor" means work of economic or financial
176 value.

177 (* * *k) "Maintain" means, in relation to labor or
178 services, to secure continued performance thereof, regardless of

179 any initial agreement on the part of the trafficked person to
180 perform such labor or service.

181 (* * *l) "Minor" means a person under the age of
182 eighteen (18) years.

183 (* * *m) "Obtain" means, in relation to labor or
184 services, to secure performance thereof.

185 (* * *n) "Pecuniary damages" means any of the
186 following:

187 (i) The greater of the gross income or value to
188 the defendant of the victim's labor or services, including sexual
189 services, not reduced by the expense the defendant incurred as a
190 result of maintaining the victim, or the value of the victim's
191 labor or services calculated under the minimum wage and overtime
192 provisions of the Fair Labor Standards Act, 29 USCS Section 201 et
193 seq., whichever is higher;

194 (ii) If it is not possible or in the best interest
195 of the victim to compute a value under subparagraph (i) of this
196 paragraph (* * *n), the equivalent of the value of the victim's
197 labor or services if the victim had provided labor or services
198 that were subject to the minimum wage and overtime provisions of
199 the Fair Labor Standards Act, 29 USCS 201 et seq.;

200 (iii) Costs and expenses incurred by the victim as
201 a result of the offense for:

- 202 1. Medical services;
203 2. Therapy or psychological counseling;
204 3. Temporary housing;

- 205 4. Transportation;
- 206 5. Childcare;
- 207 6. Physical and occupational therapy or
- 208 rehabilitation;
- 209 7. Funeral, interment, and burial services;
- 210 reasonable attorney's fees and other legal costs; and
- 211 8. Other expenses incurred by the victim.

212 (* * * o) "Serious harm" means harm, whether physical

213 or nonphysical, including psychological, economic or reputational,

214 to an individual that would compel a reasonable person in similar

215 circumstances as the individual to perform or continue to perform

216 labor or services to avoid incurring the harm.

217 (* * * p) "Services" means an * * * act committed at

218 the behest of, under the supervision of, or for the benefit of

219 another person.

220 (q) "Sex trafficking" means knowingly, through the use

221 of coercion, recruiting, enticing, harboring, transporting,

222 providing, soliciting or obtaining by any means or knowingly

223 attempting to recruit, entice, harbor, transport, provide, solicit

224 or obtain by any means a person eighteen (18) years of age or

225 older for the purpose of having the person engage in commercial

226 sexual activity.

227 (r) "Sex trafficking of a minor" means (i) knowingly

228 recruiting, enticing, harboring, transporting, providing,

229 soliciting or obtaining by any means or knowingly attempting to

230 recruit, entice, harbor, transport, provide, solicit or obtain by

231 any means a minor for the purpose of having the minor engage in
232 commercial sexual activity; or (ii) subjects or attempts to
233 subject a minor to commercial sexual activity; coercion is not an
234 element of the offense of sex trafficking of a minor.

235 (* * *s) "Sexually explicit performance" means a live
236 or public act or show intended to arouse or satisfy the sexual
237 desires or appeal to the prurient interests of patrons.

238 (* * *t) "Trafficked person" means a person subjected
239 to the practices prohibited by this act regardless of whether a
240 perpetrator is identified, apprehended, prosecuted or convicted,
241 and is a term used interchangeably with the terms "victim,"
242 "victim of trafficking" and "trafficking victim."

243 (* * *u) "Venture" means any group of two (2) or more
244 individuals associated in fact, whether or not a legal entity.

245 (* * *y) "Sexually oriented material" shall have the
246 meaning ascribed in Section 97-5-27, Mississippi Code of 1972.

247 **SECTION 3.** This act shall take effect and be in force from
248 and after July 1, 2019.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 97-3-54.1, MISSISSIPPI CODE OF 1972,
2 TO INCREASE THE PENALTIES FOR TRAFFICKING OF A MINOR; TO AMEND
3 SECTION 97-3-54.4, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN
4 DEFINITIONS AND ADD DEFINITIONS FOR "SEX TRAFFICKING", "SEX
5 TRAFFICKING OF A MINOR" AND "HUMAN TRAFFICKING"; AND FOR RELATED
6 PURPOSES.

HR43\SB2305A.3J

Andrew Ketchings
Clerk of the House of Representatives