

By: Representative Gunn

To: Judiciary A

HOUSE BILL NO. 718
(As Passed the House)

1 AN ACT TO AMEND SECTION 97-29-51, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THE CRIME OF PROMOTION OF PROSTITUTION; TO AMEND
3 SECTION 97-3-54.7, MISSISSIPPI CODE OF 1972, TO REVISE WHERE THE
4 PROCEEDS OF FORFEITED ASSETS FROM HUMAN TRAFFICKING ARE DEPOSITED;
5 TO AMEND SECTION 97-3-54.9, MISSISSIPPI CODE OF 1972, TO CONFORM
6 TO THE PRECEDING SECTION; TO REPEAL SECTION 97-3-54.8, WHICH
7 PROVIDES FOR THE "RELIEF FOR VICTIMS OF HUMAN TRAFFICKING FUND";
8 AND FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 **SECTION 1.** Section 97-29-51, Mississippi Code of 1972, is
11 amended as follows:

12 97-29-51. (1) (a) A person commits the misdemeanor of
13 procuring the services of a prostitute if the person knowingly or
14 intentionally pays, or offers or agrees to pay, money or other
15 property to another person for having engaged in, or on the
16 understanding that the other person will engage in, sexual
17 intercourse or sexual conduct with the person or with any other
18 person. "Sexual conduct" includes cunnilingus, fellatio,
19 masturbation of another, anal intercourse or the causing of
20 penetration to any extent and with any object or body part of the
21 genital or anal opening of another.



22 (b) Upon conviction under this subsection, a person
23 shall be punished by a fine not exceeding Two Hundred Dollars
24 (\$200.00) or by confinement in the county jail for not more than
25 six (6) months, or both. A second or subsequent violation of this
26 section shall be a felony, punishable by a fine not exceeding One
27 Thousand Dollars (\$1,000.00), or by imprisonment in the custody of
28 the Department of Corrections for not more than two (2) years, or
29 both.

30 (c) However, in all cases, if the person whose services
31 are procured in violation of this subsection (1) is a minor under
32 eighteen (18) years of age, the person convicted shall be guilty
33 of a felony and shall, upon conviction, be punished by
34 imprisonment for not less than five (5) years, nor more than
35 thirty (30) years, or by a fine of not less than Fifty Thousand
36 Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars
37 (\$500,000.00), or both.

38 (d) Consent of a minor is not a defense to prosecution
39 under this subsection (1).

40 (2) (a) A person commits the felony of promoting
41 prostitution if the person:

42 (i) Knowingly or intentionally entices, compels,
43 causes, induces, persuades, or encourages by promise, threat,
44 violence, or by scheme or device, another person to become a
45 prostitute, engage in conduct in violation of Section 97-29-49,



46 regardless of whether the other person can be or is arrested for,
47 charged with or convicted of the offense of prostitution;

48 (ii) Knowingly or intentionally solicits or offers
49 or agrees to solicit, or receives or gives, or agrees to receive
50 or give any money or thing of value for soliciting, or attempting
51 to solicit, another person for the purpose of prostitution;

52 (iii) Knowingly induces, persuades, or encourages
53 a person to come into or leave this state for the purpose of
54 prostitution;

55 (iv) Having control over the use of a place or
56 vehicle, knowingly or intentionally permits another person to use
57 the place or vehicle for prostitution;

58 (v) Accepts, receives, levies or appropriates
59 money or other property of value from a prostitute, without lawful
60 consideration, with knowledge or reasonable cause to know it was
61 earned, in whole or in part, from prostitution; or

62 (vi) Conducts, directs, takes, or transports, or
63 offers or agrees to take or transport, or aids or assists in
64 transporting, any person to any vehicle, conveyance, place,
65 structure, or building, or to any other person with knowledge or
66 reasonable cause to know that the purpose of such directing,
67 taking or transporting is prostitution.

68 (b) Upon conviction, a person shall be punished by a
69 fine not exceeding Five Thousand Dollars (\$5,000.00) or by
70 imprisonment in the custody of the Department of Corrections for



71 not more than ten (10) years, or both. A second or subsequent
72 violation shall be punished by a fine not exceeding Twenty
73 Thousand Dollars (\$20,000.00) or by imprisonment in the custody of
74 the Department of Corrections for up to twenty (20) years, or
75 both.

76 (c) However, in all cases, if the person whose services
77 are promoted in violation of this subsection (2) is a minor under
78 eighteen (18) years of age, the person convicted shall be guilty
79 of a felony and shall, upon conviction, be punished by
80 imprisonment for not less than five (5) years, nor more than
81 thirty (30) years, or by a fine of not less than Fifty Thousand
82 Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars
83 (\$500,000.00), or both. There is no requirement that the
84 defendant have actual knowledge of the age of the person and
85 consent of a minor is not a defense to prosecution under this
86 section.

87 (3) If it is determined that a person suspected of or
88 charged with promoting prostitution is a trafficked person, as
89 defined by Section 97-3-54.4, that fact shall be considered a
90 mitigating factor in any prosecution of that person for
91 prostitution, and the person shall be referred to appropriate
92 resources for assistance. If it is determined that a person
93 suspected of or charged with promoting prostitution is a minor
94 under eighteen (18) years of age who meets the definition of a
95 trafficked person as defined in Section 97-3-54.4, the minor is



96 immune from prosecution for promoting prostitution as a juvenile
97 or adult and provisions of Section 97-3-54.1(4) shall be
98 applicable.

99 (4) Any partnership, association, corporation or other
100 entity violating any provision of subsection (2) against the
101 promotion of prostitution shall, upon conviction, be punished by a
102 fine not exceeding Fifty Thousand Dollars (\$50,000.00). If the
103 person whose services are promoted is under eighteen (18) years of
104 age, the partnership, association, corporation or other legal
105 entity convicted shall be punished by a fine not exceeding One
106 Million Dollars (\$1,000,000.00). There is no requirement that the
107 defendant have knowledge of the age of the person. Consent of a
108 minor is not a defense to prosecution under this section.

109 (5) Investigation and prosecution of a person, partnership,
110 association, corporation or other entity under this section shall
111 not preclude investigation or prosecution against that person,
112 partnership, association, corporation or other entity for a
113 violation of other applicable criminal laws, including, but not
114 limited to, the Mississippi Human Trafficking Act, Section 97-3-54
115 et seq.

116 **SECTION 2.** Section 97-3-54.7, Mississippi Code of 1972, is
117 amended as follows:

118 97-3-54.7. **Forfeiture of assets and disposition of proceeds.**



119 (1) In addition to any other civil or criminal penalties provided
120 by law, any property used in the commission of a violation of this
121 act shall be forfeited as provided herein.

122 (a) The following property shall be subject to
123 forfeiture if used or intended for use as an instrumentality in or
124 used in furtherance of a violation of this act:

125 (i) Conveyances, including aircraft, vehicles or
126 vessels;

127 (ii) Books, records, telecommunication equipment,
128 or computers;

129 (iii) Money or weapons;

130 (iv) Everything of value furnished, or intended to
131 be furnished, in exchange for an act in violation and all proceeds
132 traceable to the exchange;

133 (v) Negotiable instruments and securities;

134 (vi) Any property, real or personal, directly or
135 indirectly acquired or received in a violation or as an inducement
136 to violate;

137 (vii) Any property traceable to proceeds from a
138 violation; and

139 (viii) Any real property, including any right,
140 title and interest in the whole of or any part of any lot or tract
141 of land used in furtherance of a violation of this act.

142 (b) (i) No property used by any person as a common
143 carrier in the transaction of business as a common carrier is



144 subject to forfeiture under this section unless it appears that
145 the owner or other person in charge of the property is a
146 consenting party or privy to a violation of this act;

147 (ii) No property is subject to forfeiture under
148 this section by reason of any act or omission proved by the owner
149 thereof to have been committed or omitted without his knowledge or
150 consent; if the confiscating authority has reason to believe that
151 the property is a leased or rented property, then the confiscating
152 authority shall notify the owner of the property within five (5)
153 days of the confiscation or within five (5) days of forming reason
154 to believe that the property is a leased or rented property;

155 (iii) Forfeiture of a property encumbered by a
156 bona fide security interest is subject to the interest of the
157 secured party if he neither had knowledge of nor consented to the
158 act or omission.

159 (2) No property shall be forfeited under the provisions of
160 this section, to the extent of the interest of an owner, by reason
161 of any act or omission established by him to have been committed
162 or omitted without his knowledge or consent.

163 (3) Seizure without process may be made if the seizure is
164 incident to an arrest or a search under a search warrant or an
165 inspection under an administrative inspection warrant.

166 (4) (a) When any property is seized under this section,
167 proceedings shall be instituted within a reasonable period of time



168 from the date of seizure or the subject property shall be
169 immediately returned to the party from whom seized.

170 (b) A petition for forfeiture shall be filed by the
171 Attorney General or a district attorney in the name of the State
172 of Mississippi, the county, or the municipality, and may be filed
173 in the county in which the seizure is made, the county in which
174 the criminal prosecution is brought, or the county in which the
175 owner of the seized property is found. Forfeiture proceedings may
176 be brought in the circuit court or the county court if a county
177 court exists in the county and the value of the seized property is
178 within the jurisdictional limits of the county court as set forth
179 in Section 9-9-21. A copy of the petition shall be served upon
180 the following persons by service of process in the same manner as
181 in civil cases:

182 (i) The owner of the property, if address is
183 known;

184 (ii) Any secured party who has registered his lien
185 or filed a financing statement as provided by law, if the identity
186 of the secured party can be ascertained by the entity filing the
187 petition by making a good faith effort to ascertain the identity
188 of the secured party;

189 (iii) Any other bona fide lienholder or secured
190 party or other person holding an interest in the property in the
191 nature of a security interest of whom the seizing law enforcement
192 agency has actual knowledge; and



193 (iv) Any person in possession of property subject
194 to forfeiture at the time that it was seized.

195 (5) If the property is a motor vehicle susceptible of
196 titling under the Mississippi Motor Vehicle Title Law and if there
197 is any reasonable cause to believe that the vehicle has been
198 titled, inquiry of the Department of Revenue shall be made as to
199 what the records of the Department of Revenue show as to who is
200 the record owner of the vehicle and who, if anyone, holds any lien
201 or security interest that affects the vehicle.

202 (6) If the property is a motor vehicle and is not titled in
203 the State of Mississippi, then an attempt shall be made to
204 ascertain the name and address of the person in whose name the
205 vehicle is licensed, and if the vehicle is licensed in a state
206 which has in effect a certificate of title law, inquiry of the
207 appropriate agency of that state shall be made as to what the
208 records of the agency show as to who is the record owner of the
209 vehicle and who, if anyone, holds any lien, security interest or
210 other instrument in the nature of a security device that affects
211 the vehicle.

212 (7) If the property is of a nature that a financing
213 statement is required by the laws of this state to be filed to
214 perfect a security interest affecting the property and if there is
215 any reasonable cause to believe that a financing statement
216 covering the security interest has been filed under the laws of
217 this state, inquiry of the appropriate office designated in



218 Section 75-9-501, shall be made as to what the records show as to
219 who is the record owner of the property and who, if anyone, has
220 filed a financing statement affecting the property.

221 (8) If the property is an aircraft or part thereof and if
222 there is any reasonable cause to believe that an instrument in the
223 nature of a security device affects the property, inquiry of the
224 Mississippi Department of Transportation shall be made as to what
225 the records of the Federal Aviation Administration show as to who
226 is the record owner of the property and who, if anyone, holds an
227 instrument in the nature of a security device which affects the
228 property.

229 (9) If the answer to an inquiry states that the record owner
230 of the property is any person other than the person who was in
231 possession of it when it was seized, or states that any person
232 holds any lien, encumbrance, security interest, other interest in
233 the nature of a security interest, mortgage or deed of trust that
234 affects the property, the record owner and also any lienholder,
235 secured party, other person who holds an interest in the property
236 in the nature of a security interest, or holder of an encumbrance,
237 mortgage or deed of trust that affects the property is to be named
238 in the petition of forfeiture and is to be served with process in
239 the same manner as in civil cases.

240 (10) If the owner of the property cannot be found and served
241 with a copy of the petition of forfeiture, or if no person was in
242 possession of the property subject to forfeiture at the time that



243 it was seized and the owner of the property is unknown, there
244 shall be filed with the clerk of the court in which the proceeding
245 is pending an affidavit to such effect, whereupon the clerk of the
246 court shall publish notice of the hearing addressed to "the
247 Unknown Owner of _____," filling in the blank space with
248 a reasonably detailed description of the property subject to
249 forfeiture. Service by publication shall contain the other
250 requisites prescribed in Section 11-33-41, and shall be served as
251 provided in Section 11-33-37, for publication of notice for
252 attachments at law.

253 (11) No proceedings instituted pursuant to the provisions of
254 this section shall proceed to hearing unless the judge conducting
255 the hearing is satisfied that this section has been complied with.
256 Any answer received from an inquiry required by this section shall
257 be introduced into evidence at the hearing.

258 (12) (a) An owner of a property that has been seized shall
259 file an answer within thirty (30) days after the completion of
260 service of process. If an answer is not filed, the court shall
261 hear evidence that the property is subject to forfeiture and
262 forfeit the property to the seizing law enforcement agency. If an
263 answer is filed, a time for hearing on forfeiture shall be set
264 within thirty (30) days of filing the answer or at the succeeding
265 term of court if court would not be in session within thirty (30)
266 days after filing the answer. The court may postpone the



267 forfeiture hearing to a date past the time any criminal action is
268 pending against the owner upon request of any party.

269 (b) If the owner of the property has filed an answer
270 denying that the property is subject to forfeiture, then the
271 burden is on the petitioner to prove that the property is subject
272 to forfeiture. However, if an answer has not been filed by the
273 owner of the property, the petition for forfeiture may be
274 introduced into evidence and is prima facie evidence that the
275 property is subject to forfeiture. The burden of proof placed
276 upon the petitioner in regard to property forfeited under the
277 provisions of this chapter shall be by a preponderance of the
278 evidence.

279 (c) At the hearing any claimant of any right, title or
280 interest in the property may prove his lien, encumbrance, security
281 interest, other interest in the nature of a security interest,
282 mortgage or deed of trust to be bona fide and created without
283 knowledge or consent that the property was to be used so as to
284 cause the property to be subject to forfeiture.

285 (d) If it is found that the property is subject to
286 forfeiture, then the judge shall forfeit the property. However,
287 if proof at the hearing discloses that the interest of any bona
288 fide lienholder, secured party, other person holding an interest
289 in the property in the nature of a security interest, or any
290 holder of a bona fide encumbrance, mortgage or deed of trust is
291 greater than or equal to the present value of the property, the



292 court shall order the property released to him. If the interest
293 is less than the present value of the property and if the proof
294 shows that the property is subject to forfeiture, the court shall
295 order the property forfeited.

296 (13) Unless otherwise provided herein, all personal property
297 which is forfeited under this section shall be liquidated and,
298 after deduction of court costs and the expense of liquidation, the
299 proceeds shall be divided as follows:

300 (a) If only one (1) law enforcement agency participates
301 in the underlying criminal case out of which the forfeiture
302 arises, fifty percent (50%) of the proceeds shall be forwarded to
303 the State Treasurer and deposited in the * * * Victims of Human
304 Trafficking and Commercial Sexual Exploitation Fund, and fifty
305 percent (50%) shall be deposited and credited to the budget of the
306 participating law enforcement agency.

307 (b) If more than one (1) law enforcement agency
308 participates in the underlying criminal case out of which the
309 forfeiture arises, fifty percent (50%) of the proceeds shall be
310 forwarded to the State Treasurer and deposited in the * * *
311 Victims of Human Trafficking and Commercial Sexual Exploitation
312 Fund, twenty-five percent (25%) of the proceeds shall be deposited
313 and credited to the budget of the law enforcement agency whose
314 officers initiated the criminal case and twenty-five percent (25%)
315 shall be divided equitably between or among the other
316 participating law enforcement agencies, and shall be deposited and



317 credited to the budgets of the participating law enforcement
318 agencies. In the event that the other participating law
319 enforcement agencies cannot agree on the division of their
320 twenty-five percent (25%), a petition shall be filed by any one of
321 them in the court in which the civil forfeiture case is brought
322 and the court shall make an equitable division.

323 (14) All money forfeited under this section shall be
324 divided, deposited and credited in the same manner as provided in
325 subsection (13).

326 (15) All real estate forfeited under the provisions of this
327 section shall be sold to the highest and best bidder at a public
328 auction for cash, the auction to be conducted by the chief law
329 enforcement officer of the initiating law enforcement agency, or
330 his designee, at such place, on such notice and in accordance with
331 the same procedure, as far as practicable, as is required in the
332 case of sales of land under execution at law. The proceeds of the
333 sale shall first be applied to the cost and expense in
334 administering and conducting the sale, then to the satisfaction of
335 all mortgages, deeds of trust, liens and encumbrances of record on
336 the property. The remaining proceeds shall be divided, forwarded
337 and deposited in the same manner as provided in subsection (13).

338 (16) (a) Any county or municipal law enforcement agency may
339 maintain, repair, use and operate for official purposes all
340 property described in subsection (1)(a)(i) of this section that
341 has been forfeited to the agency if it is free from any interest



342 of a bona fide lienholder, secured party or other party who holds
343 an interest in the property in the nature of a security interest.
344 The county or municipal law enforcement agency may purchase the
345 interest of a bona fide lienholder, secured party or other party
346 who holds an interest so that the property can be released for its
347 use. If the property is a motor vehicle susceptible of titling
348 under the Mississippi Motor Vehicle Title Law, the law enforcement
349 agency shall be deemed to be the purchaser, and the certificate of
350 title shall be issued to it as required by subsection (9) of this
351 section.

352 (b) (i) If a vehicle is forfeited to or transferred to
353 a sheriff's department, then the sheriff may transfer the vehicle
354 to the county for official or governmental use as the board of
355 supervisors may direct.

356 (ii) If a vehicle is forfeited to or transferred
357 to a police department, then the police chief may transfer the
358 vehicle to the municipality for official or governmental use as
359 the governing authority of the municipality may direct.

360 (c) If a motor vehicle forfeited to a county or
361 municipal law enforcement agency becomes obsolete or is no longer
362 needed for official or governmental purposes, it may be disposed
363 of in accordance with Section 19-7-5 or in the manner provided by
364 law for disposing of municipal property.

365 (17) The forfeiture procedure set forth in this section is
366 the sole remedy of any claimant, and no court shall have



367 jurisdiction to interfere therewith by replevin, injunction,
368 supersedeas or in any other manner.

369 **SECTION 3.** Section 97-3-54.9, Mississippi Code of 1972, is
370 amended as follows:

371 97-3-54.9. **Statewide Human Trafficking Coordinator; duties.**

372 (1) There is created the position of statewide human trafficking
373 coordinator within the Mississippi Bureau of Investigation of the
374 Department of Public Safety office. The duties of the coordinator
375 shall be as follows:

376 (a) Coordinate the implementation of this act;

377 (b) Evaluate state efforts to combat human trafficking;

378 (c) Collect data on human trafficking activity within
379 the state on an ongoing basis, including types of activities
380 reported, efforts to combat human trafficking, and impact on
381 victims and on the state;

382 (d) Exclude from publicly released portions of the data
383 collected under subsection (1)(c) the identity of any victim and
384 the victim's family;

385 (e) Promote public awareness about human trafficking,
386 remedies and services for victims, and national hotline
387 information;

388 (f) Create and maintain a website to publicize the
389 coordinator's work;

390 (g) Submit to the Legislature an annual report of its
391 evaluation under subsection (1)(b) and any other annual report



392 required by law, including any recommendations, and summary of
393 data collected under subsection (1)(c) and any other data
394 otherwise required by law to be collected by the coordinator;

395 ***

396 (***h) Assist in the creation and operations of
397 local human trafficking task forces or working groups around the
398 state, including serving on a task force or a multidisciplinary
399 child protection team;

400 (***i) Conduct other activities, including, but not
401 limited to, applying for grants to enhance investigation and
402 prosecution of trafficking offenses or to improve victim services
403 to combat human trafficking within this state which are
404 appropriate; and

405 (***j) Perform any other duties specifically
406 required by law for the coordinator.

407 (2) The coordinator shall be authorized to seek input and
408 assistance from state agencies, nongovernmental agencies, service
409 providers and other individuals in the performance of the
410 foregoing duties.

411 (3) Each state agency, board and commission shall be
412 required to fully cooperate with the coordinator in the
413 performance of the duties of that position.

414 (4) Every investigation of an offense under this chapter
415 shall be reported to the coordinator by the initiating law



416 enforcement agency pursuant to guidelines established by the
417 coordinator.

418 (5) Notwithstanding the provisions of Section 43-21-261,
419 disclosure by any state agency, nongovernmental agency, service
420 provider or local or state law enforcement agency of
421 nonidentifying information regarding a minor victim to the
422 coordinator for the purposes of evaluating and collecting data
423 regarding trafficking offenses in the state is specifically
424 authorized.

425 **SECTION 4.** Section 97-3-54.8, Mississippi Code of 1972, which
426 provides for the Victims of Human Trafficking Fund, is repealed.

427 **SECTION 5.** This act shall take effect and be in force from
428 and after July 1, 2022.

