Adopted COMMITTEE AMENDMENT NO 1 PROPOSED TO

Senate Bill No. 2321

BY: Committee

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

22 <u>SECTION 1.</u> For purposes of this act, the following words 23 shall have the meanings ascribed herein unless the context 24 requires otherwise:

25 (a) "Human trafficking" means the actions that constitute an offense under Section 97-3-54.1 or 97-3-54.3. 26 27 (b) "Venture" means any group of two (2) or more 28 individuals associated in fact, whether or not a legal entity. 29 SECTION 2. (1) A defendant who engages in human trafficking 30 or who willfully, intentionally and knowingly benefits from 31 participating in a venture that trafficks another person is liable

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32 to the person trafficked, as provided by this act, for damages 33 proximately caused by the trafficking of that person by the 34 defendant or venture.

35 (2) The occurrence of human trafficking on the property of 36 one not engaged in or benefitting from such human trafficking 37 shall not, in and of itself, subject the property owner to 38 liability under this act.

39 (3) It is not a defense to liability under this act that a 40 defendant has been acquitted or has not been prosecuted or 41 convicted under Section 97-3-54.1 or Section 97-3-54.4, or has 42 been convicted of a different offense or of a different type or 43 class of offense, for the conduct that is alleged to give rise to 44 liability under this act.

45 (4) The cause of action created by this section is in
46 addition to any other remedy provided by common law or statute.
47 <u>SECTION 3.</u> (1) A claimant who prevails in a suit under this

48 act may be awarded:

49 (a) Compensatory damages, including damages for mental
 50 anguish even if an injury other than mental anguish is not shown;

51

(b) Court costs; and

52 (c) Reasonable attorney's fees.

53 (2) In addition to an award under subsection (1) of this 54 section, a claimant who prevails in a suit under this act may 55 recover punitive damages subject to the provisions of Section 56 11-1-65.

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57 <u>SECTION 4.</u> A person who engages in human trafficking or who 58 willfully, intentionally and knowingly benefits from participating 59 in a venture that trafficks another person and who is found liable 60 under this act for any amount of damages proximately caused by the 61 trafficking is jointly liable with any other defendant found 62 liable under this act for the entire amount of damages proximately 63 caused by the trafficking.

64 <u>SECTION 5.</u> Sections 1 through 5 of this act shall be 65 liberally construed and applied to promote its underlying purpose 66 to protect persons from human trafficking and provide adequate 67 remedies to victims of human trafficking.

68 SECTION 6. Section 97-29-51, Mississippi Code of 1972, is 69 amended as follows:

70 97-29-51. A person commits the misdemeanor of (1) (a) 71 procuring the services of a prostitute if the person knowingly or 72 intentionally pays, or offers or agrees to pay, money or other 73 property to another person for having engaged in, or on the 74 understanding that the other person will engage in, sexual 75 intercourse or sexual conduct with the person or with any other 76 "Sexual conduct" includes cunnilingus, fellatio, person. 77 masturbation of another, anal intercourse or the causing of 78 penetration to any extent and with any object or body part of the 79 genital or anal opening of another.

80 (b) Upon conviction under this subsection, a person81 shall be punished by a fine not exceeding Two Hundred Dollars

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82 (\$200.00) or by confinement in the county jail for not more than 83 six (6) months, or both. A second or subsequent violation of this 84 section shall be a felony, punishable by a fine not exceeding One 85 Thousand Dollars (\$1,000.00), or by imprisonment in the custody of 86 the Department of Corrections for not more than two (2) years, or 87 both.

88 However, in all cases, if the person whose services (C) are procured in violation of this subsection (1) is a minor under 89 90 eighteen (18) years of age, the person convicted shall be guilty of a felony and shall, upon conviction, be punished by 91 imprisonment for not less than five (5) years, nor more than 92 93 thirty (30) years, or by a fine of not less than Fifty Thousand 94 Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars 95 (\$500,000.00), or both.

96 (d) Consent of a minor is not a defense to prosecution97 under this subsection (1).

98 (2) (a) A person commits the felony of promoting99 prostitution if the person:

(i) Knowingly or intentionally entices, compels,
causes, induces, persuades, or encourages by promise, threat,
violence, or by scheme or device, another person to become a
prostitute, engage in conduct in violation of Section 97-29-49,
regardless of whether the other person can be or is arrested for,
charged with or convicted of the offense of prostitution;

22/HR12/SB2321A.1J PAGE 4 (GT/AM) (ii) Knowingly or intentionally solicits or offers or agrees to solicit, or receives or gives, or agrees to receive or give any money or thing of value for soliciting, or attempting to solicit, another person for the purpose of prostitution;

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

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

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

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

(b) Upon conviction, a person shall be punished by a
fine not exceeding Five Thousand Dollars (\$5,000.00) or by
imprisonment in the custody of the Department of Corrections for
not more than ten (10) years, or both. A second or subsequent
violation shall be punished by a fine not exceeding Twenty

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131 Thousand Dollars (\$20,000.00) or by imprisonment in the custody of 132 the Department of Corrections for up to twenty (20) years, or 133 both.

134 However, in all cases, if the person whose services (C) 135 are promoted in violation of this subsection (2) is a minor under 136 eighteen (18) years of age, the person convicted shall be guilty 137 of a felony and shall, upon conviction, be punished by 138 imprisonment for not less than five (5) years, nor more than 139 thirty (30) years, or by a fine of not less than Fifty Thousand 140 Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars 141 (\$500,000.00), or both. There is no requirement that the 142 defendant have actual knowledge of the age of the person and 143 consent of a minor is not a defense to prosecution under this 144 section.

If it is determined that a person suspected of or 145 (3)146 charged with promoting prostitution is a trafficked person, as 147 defined by Section 97-3-54.4, that fact shall be considered a mitigating factor in any prosecution of that person for 148 149 prostitution, and the person shall be referred to appropriate 150 resources for assistance. If it is determined that a person 151 suspected of or charged with promoting prostitution is a minor 152 under eighteen (18) years of age who meets the definition of a 153 trafficked person as defined in Section 97-3-54.4, the minor is 154 immune from prosecution for promoting prostitution as a juvenile

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155 or adult and provisions of Section 97-3-54.1(4) shall be 156 applicable.

157 Any partnership, association, corporation or other (4) 158 entity violating any provision of subsection (2) against the 159 promotion of prostitution shall, upon conviction, be punished by a 160 fine not exceeding Fifty Thousand Dollars (\$50,000.00). If the person whose services are promoted is under eighteen (18) years of 161 162 age, the partnership, association, corporation or other legal 163 entity convicted shall be punished by a fine not exceeding One 164 Million Dollars (\$1,000,000.00). There is no requirement that the 165 defendant have knowledge of the age of the person. Consent of a 166 minor is not a defense to prosecution under this section.

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

174 SECTION 7. Section 97-3-54.7, Mississippi Code of 1972, is 175 amended as follows:

97-3-54.7. Forfeiture of assets and disposition of proceeds.
(1) In addition to any other civil or criminal penalties provided
by law, any property used in the commission of a violation of this
act shall be forfeited as provided herein.

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180 The following property shall be subject to (a) 181 forfeiture if used or intended for use as an instrumentality in or used in furtherance of a violation of this act: 182 183 (i) Conveyances, including aircraft, vehicles or 184 vessels; 185 (ii) Books, records, telecommunication equipment, 186 or computers; 187 Money or weapons; (iii) 188 (iv) Everything of value furnished, or intended to 189 be furnished, in exchange for an act in violation and all proceeds 190 traceable to the exchange; 191 Negotiable instruments and securities; (v) 192 Any property, real or personal, directly or (vi) 193 indirectly acquired or received in a violation or as an inducement 194 to violate: 195 (vii) Any property traceable to proceeds from a 196 violation; and 197 (viii) Any real property, including any right, 198 title and interest in the whole of or any part of any lot or tract of land used in furtherance of a violation of this act. 199 200 (b) (i) No property used by any person as a common 201 carrier in the transaction of business as a common carrier is 202 subject to forfeiture under this section unless it appears that 203 the owner or other person in charge of the property is a consenting party or privy to a violation of this act; 204

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205 (ii) No property is subject to forfeiture under 206 this section by reason of any act or omission proved by the owner 207 thereof to have been committed or omitted without his knowledge or 208 consent; if the confiscating authority has reason to believe that 209 the property is a leased or rented property, then the confiscating 210 authority shall notify the owner of the property within five (5) 211 days of the confiscation or within five (5) days of forming reason 212 to believe that the property is a leased or rented property;

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

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

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

(4) (a) When any property is seized under this section, proceedings shall be instituted within a reasonable period of time from the date of seizure or the subject property shall be immediately returned to the party from whom seized.

(b) A petition for forfeiture shall be filed by the Attorney General or a district attorney in the name of the State

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230 of Mississippi, the county, or the municipality, and may be filed 231 in the county in which the seizure is made, the county in which 232 the criminal prosecution is brought, or the county in which the 233 owner of the seized property is found. Forfeiture proceedings may 234 be brought in the circuit court or the county court if a county 235 court exists in the county and the value of the seized property is 236 within the jurisdictional limits of the county court as set forth 237 in Section 9-9-21. A copy of the petition shall be served upon 238 the following persons by service of process in the same manner as 239 in civil cases:

240 (i) The owner of the property, if address is241 known;

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

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

(iv) Any person in possession of property subjectto forfeiture at the time that it was seized.

(5) If the property is a motor vehicle susceptible oftitling under the Mississippi Motor Vehicle Title Law and if there

22/HR12/SB2321A.1J PAGE 10 (GT/AM) is any reasonable cause to believe that the vehicle has been titled, inquiry of the Department of Revenue shall be made as to what the records of the Department of Revenue show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest that affects the vehicle.

260 (6) If the property is a motor vehicle and is not titled in 261 the State of Mississippi, then an attempt shall be made to 262 ascertain the name and address of the person in whose name the 263 vehicle is licensed, and if the vehicle is licensed in a state 264 which has in effect a certificate of title law, inquiry of the 265 appropriate agency of that state shall be made as to what the 266 records of the agency show as to who is the record owner of the 267 vehicle and who, if anyone, holds any lien, security interest or 268 other instrument in the nature of a security device that affects 269 the vehicle.

270 (7) If the property is of a nature that a financing 271 statement is required by the laws of this state to be filed to 272 perfect a security interest affecting the property and if there is 273 any reasonable cause to believe that a financing statement 274 covering the security interest has been filed under the laws of 275 this state, inquiry of the appropriate office designated in 276 Section 75-9-501, shall be made as to what the records show as to 277 who is the record owner of the property and who, if anyone, has 278 filed a financing statement affecting the property.

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279 (8) If the property is an aircraft or part thereof and if 280 there is any reasonable cause to believe that an instrument in the 281 nature of a security device affects the property, inquiry of the 282 Mississippi Department of Transportation shall be made as to what the records of the Federal Aviation Administration show as to who 283 284 is the record owner of the property and who, if anyone, holds an 285 instrument in the nature of a security device which affects the 286 property.

287 If the answer to an inquiry states that the record owner (9) of the property is any person other than the person who was in 288 289 possession of it when it was seized, or states that any person 290 holds any lien, encumbrance, security interest, other interest in 291 the nature of a security interest, mortgage or deed of trust that 292 affects the property, the record owner and also any lienholder, 293 secured party, other person who holds an interest in the property 294 in the nature of a security interest, or holder of an encumbrance, 295 mortgage or deed of trust that affects the property is to be named 296 in the petition of forfeiture and is to be served with process in 297 the same manner as in civil cases.

(10) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, there shall be filed with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the

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304 court shall publish notice of the hearing addressed to "the 305 Unknown Owner of ______," filling in the blank space with 306 a reasonably detailed description of the property subject to 307 forfeiture. Service by publication shall contain the other 308 requisites prescribed in Section 11-33-41, and shall be served as 309 provided in Section 11-33-37, for publication of notice for 310 attachments at law.

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

316 (12)(a) An owner of a property that has been seized shall 317 file an answer within thirty (30) days after the completion of 318 service of process. If an answer is not filed, the court shall 319 hear evidence that the property is subject to forfeiture and 320 forfeit the property to the seizing law enforcement agency. If an 321 answer is filed, a time for hearing on forfeiture shall be set 322 within thirty (30) days of filing the answer or at the succeeding 323 term of court if court would not be in session within thirty (30) 324 days after filing the answer. The court may postpone the 325 forfeiture hearing to a date past the time any criminal action is 326 pending against the owner upon request of any party.

327 (b) If the owner of the property has filed an answer328 denying that the property is subject to forfeiture, then the

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329 burden is on the petitioner to prove that the property is subject However, if an answer has not been filed by the 330 to forfeiture. 331 owner of the property, the petition for forfeiture may be 332 introduced into evidence and is prima facie evidence that the 333 property is subject to forfeiture. The burden of proof placed 334 upon the petitioner in regard to property forfeited under the 335 provisions of this chapter shall be by a preponderance of the 336 evidence.

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

343 (d) If it is found that the property is subject to 344 forfeiture, then the judge shall forfeit the property. However, 345 if proof at the hearing discloses that the interest of any bona 346 fide lienholder, secured party, other person holding an interest 347 in the property in the nature of a security interest, or any 348 holder of a bona fide encumbrance, mortgage or deed of trust is 349 greater than or equal to the present value of the property, the 350 court shall order the property released to him. If the interest 351 is less than the present value of the property and if the proof 352 shows that the property is subject to forfeiture, the court shall 353 order the property forfeited.

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

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

365 If more than one (1) law enforcement agency (b) 366 participates in the underlying criminal case out of which the 367 forfeiture arises, fifty percent (50%) of the proceeds shall be 368 forwarded to the State Treasurer and deposited in the * * * 369 Victims of Human Trafficking and Commercial Sexual Exploitation 370 Fund, twenty-five percent (25%) of the proceeds shall be deposited 371 and credited to the budget of the law enforcement agency whose 372 officers initiated the criminal case and twenty-five percent (25%) 373 shall be divided equitably between or among the other 374 participating law enforcement agencies, and shall be deposited and 375 credited to the budgets of the participating law enforcement 376 agencies. In the event that the other participating law 377 enforcement agencies cannot agree on the division of their twenty-five percent (25%), a petition shall be filed by any one of 378

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379 them in the court in which the civil forfeiture case is brought 380 and the court shall make an equitable division.

381 (14) All money forfeited under this section shall be 382 divided, deposited and credited in the same manner as provided in 383 subsection (13).

384 (15)All real estate forfeited under the provisions of this 385 section shall be sold to the highest and best bidder at a public 386 auction for cash, the auction to be conducted by the chief law 387 enforcement officer of the initiating law enforcement agency, or 388 his designee, at such place, on such notice and in accordance with 389 the same procedure, as far as practicable, as is required in the 390 case of sales of land under execution at law. The proceeds of the 391 sale shall first be applied to the cost and expense in 392 administering and conducting the sale, then to the satisfaction of 393 all mortgages, deeds of trust, liens and encumbrances of record on 394 the property. The remaining proceeds shall be divided, forwarded 395 and deposited in the same manner as provided in subsection (13). 396 (a) Any county or municipal law enforcement agency may (16)

maintain, repair, use and operate for official purposes all property described in subsection (1)(a)(i) of this section that has been forfeited to the agency if it is free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the property in the nature of a security interest. The county or municipal law enforcement agency may purchase the interest of a bona fide lienholder, secured party or other party

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404 who holds an interest so that the property can be released for its 405 use. If the property is a motor vehicle susceptible of titling 406 under the Mississippi Motor Vehicle Title Law, the law enforcement 407 agency shall be deemed to be the purchaser, and the certificate of 408 title shall be issued to it as required by subsection (9) of this 409 section.

410 (b) (i) If a vehicle is forfeited to or transferred to 411 a sheriff's department, then the sheriff may transfer the vehicle 412 to the county for official or governmental use as the board of 413 supervisors may direct.

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

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

423 (17) The forfeiture procedure set forth in this section is 424 the sole remedy of any claimant, and no court shall have 425 jurisdiction to interfere therewith by replevin, injunction, 426 supersedeas or in any other manner.

427 SECTION 8. Section 97-3-54.9, Mississippi Code of 1972, is 428 amended as follows:

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97-3-54.9. Statewide Human Trafficking Coordinator; duties.
(1) There is created the position of statewide human trafficking
coordinator within the Mississippi Bureau of Investigation of the
Department of Public Safety office. The duties of the coordinator
shall be as follows:

(a) Coordinate the implementation of this act;
(b) Evaluate state efforts to combat human trafficking;
(c) Collect data on human trafficking activity within
the state on an ongoing basis, including types of activities
reported, efforts to combat human trafficking, and impact on
victims and on the state;

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

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

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

(g) Submit to the Legislature an annual report of its evaluation under subsection (1)(b) and any other annual report required by law, including any recommendations, and summary of data collected under subsection (1)(c) and any other data otherwise required by law to be collected by the coordinator; * * *

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454 (***<u>h</u>) Assist in the creation and operations of 455 local human trafficking task forces or working groups around the 456 state, including serving on a task force or a multidisciplinary 457 child protection team;

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

463 (* * * j) Perform any other duties specifically 464 required by law for the coordinator.

465 (2) The coordinator shall be authorized to seek input and
466 assistance from state agencies, nongovernmental agencies, service
467 providers and other individuals in the performance of the
468 foregoing duties.

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

472 (4) Every investigation of an offense under this chapter
473 shall be reported to the coordinator by the initiating law
474 enforcement agency pursuant to guidelines established by the
475 coordinator.

476 (5) Notwithstanding the provisions of Section 43-21-261,
477 disclosure by any state agency, nongovernmental agency, service
478 provider or local or state law enforcement agency of

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479 nonidentifying information regarding a minor victim to the

480 coordinator for the purposes of evaluating and collecting data

481 regarding trafficking offenses in the state is specifically

482 authorized.

483 SECTION 9. Section 97-3-54.8, Mississippi Code of 1972, which
484 provides for the Victims of Human Trafficking Fund, is repealed.
485 SECTION 10. This act shall take effect and be in force from
486 and after July 1, 2022, and shall stand repealed on June 30, 2022.

Further, amend by striking the title in its entirety and

inserting in lieu thereof the following:

AN ACT TO CREATE A CIVIL CAUSE OF ACTION FOR ENGAGING IN 1 2 HUMAN TRAFFICKING OR WILLFULLY, INTENTIONALLY AND KNOWINGLY 3 BENEFITTING FROM PARTICIPATION IN HUMAN TRAFFICKING; TO DEFINE 4 TERMS; TO PROVIDE THAT A DEFENDANT WHO ENGAGES IN HUMAN 5 TRAFFICKING OR WHO WILLFULLY, INTENTIONALLY AND KNOWINGLY BENEFITS 6 FROM PARTICIPATING IN A VENTURE THAT TRAFFICKS ANOTHER PERSON IS 7 LIABLE TO THE PERSON TRAFFICKED FOR DAMAGES PROXIMATELY CAUSED BY 8 THE TRAFFICKING OF THAT PERSON BY THE DEFENDANT OR VENTURE; TO 9 PROVIDE FOR SHAREHOLDER OR MEMBER LIABILITY; TO CLARIFY THAT THE 10 OCCURRENCE OF HUMAN TRAFFICKING ON THE PROPERTY OF ONE NOT ENGAGED 11 IN OR BENEFITTING FROM SUCH HUMAN TRAFFICKING SHALL NOT, IN AND OF 12 ITSELF, SUBJECT THE PROPERTY OWNER TO LIABILITY; TO AMEND SECTION 13 97-29-51, MISSISSIPPI CODE OF 1972, TO CLARIFY THE CRIME OF PROMOTION OF PROSTITUTION; TO AMEND SECTION 97-3-54.7, MISSISSIPPI 14 CODE OF 1972, TO REVISE WHERE THE PROCEEDS OF FORFEITED ASSETS 15 16 FROM HUMAN TRAFFICKING ARE DEPOSITED; TO AMEND SECTION 97-3-54.9, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; TO 17 REPEAL SECTION 97-3-54.8, MISSISSIPPI CODE OF 1972, WHICH PROVIDES 18 19 FOR THE "RELIEF FOR VICTIMS OF HUMAN TRAFFICKING FUND"; AND FOR 20 RELATED PURPOSES.