MISSISSIPPI LEGISLATURE

By: Representatives Byrd, Baker, Buck (72nd), DeBar, Gipson, McLeod, Reynolds, Taylor, Arnold, Chism, Martinson, Boyd, Upshaw

REGULAR SESSION 2013

To: Judiciary B

HOUSE BILL NO. 673
(As Sent to Governor)

AN ACT TO AMEND SECTION 97-3-54, MISSISSIPPI CODE OF 1972, TO REVISE THE TITLE OF THE HUMAN TRAFFICKING ACT FOR CLARITY; TO AMEND SECTION 97-3-54.1, MISSISSIPPI CODE OF 1972, TO REVISE PENALTIES FOR HUMAN TRAFFICKING AND SPECIFY ADDITIONAL ELEMENTS OF THE OFFENSE OF HUMAN TRAFFICKING; TO AMEND SECTION 97-3-54.3, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND SECTION 97-3-54.4, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS; TO CREATE NEW SECTION 97-3-54.5, MISSISSIPPI CODE OF 1972, TO AUTHORIZE USE OF UNDERCOVER OPERATIVES TO INVESTIGATE SUSPECTED HUMAN TRAFFICKING; TO CREATE NEW SECTION 97-3-54.6, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR INJUNCTIVE AND OTHER RELIEF FOR VICTIMS AND TO REQUIRE CONFIDENTIALITY; TO CREATE NEW SECTION 97-3-54.7, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR FORFEITURE OF ASSETS USED IN FURTHERANCE OF TRAFFICKING AND TO PROVIDE FOR THE DISPOSITION OF PROCEEDS OF FORFEITURE; TO CREATE NEW SECTION 97-3-54.8, MISSISSIPPI CODE OF 1972, TO CREATE THE "RELIEF FOR VICTIMS OF HUMAN TRAFFICKING FUND"; TO CREATE NEW SECTION 97-3-54.9, MISSISSIPPI CODE OF 1972, TO CREATE THE POSITION OF STATEWIDE HUMAN TRAFFICKING COORDINATOR; TO AMEND SECTION 97-29-49, MISSISSIPPI CODE OF 1972, TO REVISE THE ELEMENTS AND PUNISHMENT FOR THE OFFENSE OF PROSTITUTION; TO AMEND SECTION 97-29-51, MISSISSIPPI CODE OF 1972, TO REVISE THE ELEMENTS AND PUNISHMENT FOR THE OFFENSE OF SOLICITING PROSTITUTION; TO REPEAL SECTION 97-29-53, MISSISSIPPI CODE OF 1972, WHICH SETS FORTH THE PUNISHMENT FOR PROSTITUTION AND SOLICITATION; TO AMEND SECTION 97-43-3, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS IN THE RACKETEERING ACT; TO AMEND SECTIONS 97-5-5 AND 97-5-7, MISSISSIPPI CODE OF 1972, TO CONFORM THE OFFENSES OF ENTICEMENT OF A MINOR TO THE TENOR OF THIS ACT; TO AMEND SECTION 97-5-27, MISSISSIPPI CODE OF 1972, TO CONFORM DISSEMINATION OF SEXUALLY ORIENTED MATERIAL; TO AMEND SECTION 97-5-31, MISSISSIPPI CODE OF 1972, TO CONFORM THE OFFENSE OF COMPUTER-LURING; TO AMEND SECTION 99-1-5, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 709, 2013 REGULAR SESSION, TO REVISE THE STATUTE OF LIMITATIONS.
FOR THE PROSECUTION OF DOMESTIC VIOLENCE AND HUMAN TRAFFICKING CASES; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 97-3-54, Mississippi Code of 1972, is amended as follows:

97-3-54. Sections 97-3-54 through 97-3-54.9 may be known and cited as the Mississippi Human Trafficking Act.

SECTION 2. Section 97-3-54.1, Mississippi Code of 1972, is amended as follows:

97-3-54.1. (1) (a) A person who 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 who benefits, whether financially or by receiving anything of value from participating in an enterprise that he knows or reasonably should have known has engaged in such acts, shall be guilty of the crime of human-trafficking.

(b) A person who knowingly purchases the forced labor or services of a trafficked person or who otherwise knowingly subjects, or attempts to subject, another person to forced labor or services or who benefits, whether financially or by receiving anything of value from participating in an enterprise that he knows or reasonably should have known has engaged in such acts, shall be guilty of the crime of procuring involuntary servitude.
(c) A person who knowingly subjects, or attempts to subject, or who recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, a minor, knowing that the minor will engage in commercial sexual activity, sexually explicit performance, or the production of sexually oriented material, or causes or attempts to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of sexually oriented material, shall be guilty of procuring sexual servitude of a minor and shall be punished by commitment to the custody of the Department of Corrections for not less than five (5) nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars ($50,000.00) nor more than Five Hundred Thousand Dollars ($500,000.00), or both. It is not a defense in a prosecution under this section that a minor consented to engage in the commercial sexual activity, sexually explicit performance, or the production of sexually oriented material, or that the defendant reasonably believed that the minor was eighteen (18) years of age or older.

(2) If the victim is not a minor, a person who is convicted of an offense set forth in subsection (1)(a) or (b) of this section shall be committed to the custody of the Department of Corrections for not less than two (2) years nor more than twenty (20) years, or by a fine of not less than Ten Thousand Dollars ($10,000.00) nor more than One Hundred Thousand Dollars ($100,000.00).
($100,000.00), or both. If the victim of the offense is a minor, a person who is convicted of an offense set forth in subsection (1)(a) or (b) of this section shall be committed to the custody of the Department of Corrections for not less than five (5) years nor more than twenty (20) years, or by a fine of not less than Twenty Thousand Dollars ($20,000.00) nor more than One Hundred Thousand Dollars ($100,000.00), or both.

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

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

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

(c) It is an affirmative defense to a prosecution of an enterprise that the enterprise had in place adequate procedures, including an effective complaint procedure, designed to prevent persons associated with the enterprise from engaging in the unlawful conduct and to promptly correct any violations of this chapter.
(d) The court may consider the severity of the enterprise's offense and order penalties, including: (i) a fine of not more than One Million Dollars ($1,000,000.00); (ii) disgorgement of profit; and (iii) debarment from government contracts. Additionally, the court may order any of the relief provided in Section 97-3-54.7.

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

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

   (a) Is a victim; and
   
   (b) Committed the offense under a reasonable apprehension created by a person that, if the defendant did not commit the act, the person would inflict serious harm on the
defendant, a member of the defendant's family, or a close
associate.

SECTION 3. Section 97-3-54.3, Mississippi Code of 1972, is
amended as follows:
97-3-54.3. A person who knowingly aids, abets or conspires
with one or more persons to violate * * * the Mississippi Human
Trafficking Act shall be considered a principal in the offense and
shall be indicted and punished as such whether the principal has
been previously convicted or not.

SECTION 4. Section 97-3-54.4, Mississippi Code of 1972, is
amended as follows:
97-3-54.4. For the purposes of * * * the Mississippi Human
Trafficking Act the following words and phrases shall have the
meanings ascribed herein unless the context clearly requires
otherwise:
(a) "Act" or "this act" means the Mississippi Human
Trafficking Act.
(b) "Actor" means a person who violates any of
the provisions of Sections 97-3-54 through 97-3-54.4.
(c) "Blackmail" means obtaining property or
things of value of another by threatening to (i) inflict bodily
injury on anyone; (ii) commit any other criminal offense; or (iii)
expose any secret tending to subject any person to hatred,
contempt or ridicule.
"Commercial sexual activity" means any sex act on account of which anything of value is given to, promised to, or received by any person.

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

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

"Forced labor or services" means labor or services that are performed or provided by another person and are obtained or maintained through an actor:

(i) Causing or threatening to cause serious harm to any person;

(ii) Physically restraining or threatening to physically restrain any 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) Using blackmail;
(vi) Causing or threatening to cause financial harm to any person; *
(vii) Abusing a position of power;
(viii) Using an individual's personal services as payment or satisfaction of a real or purported debt when: 1. the reasonable value of the services is not applied toward the liquidation of the debt; 2. the length of the services is not limited and the nature of the services is not defined; 3. the principal amount of the debt does not reasonably reflect the value of the items or services for which the debt is incurred; or 4. the individual is prevented from acquiring accurate and timely information about the disposition of the debt;
(ix) Using any scheme, plan or pattern of conduct intended to cause any person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.
(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 trafficked person to perform such labor or service.
"Minor" means a person under the age of eighteen (18) years.

"Obtain" means, in relation to labor or services, to secure performance thereof.

"Pecuniary damages" means any of the following:

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

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

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

1. Medical services;
2. Therapy or psychological counseling;
3. Temporary housing;
4. Transportation;
5. Childcare;
6. Physical and occupational therapy or 
rehabilitation;

7. Funeral, interment, and burial services;
reasonable attorney's fees and other legal costs; and

8. Other expenses incurred by the victim.

(m) "Serious harm" means harm, whether physical or 
nonphysical, including psychological, economic or reputational, to 
an individual that would compel a reasonable person in similar 
circumstances as the individual to perform or continue to perform 
labor or services to avoid incurring the harm.

( ***n) "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 or a third party and includes, without limitation, 
commercial sexual activity ***, sexually explicit 
performances ***, or the production of sexually explicit 
materials.

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

( ***p) "Trafficked person" means a person subjected 
to the practices prohibited by *** this act regardless of 
whether a perpetrator is identified, apprehended, prosecuted or 
convicted, and is a term used interchangeably with the terms 
"victim," "victim of trafficking" and "trafficking victim."
"Venture" means any group of two (2) or more individuals associated in fact, whether or not a legal entity.

"Sexually oriented material" shall have the meaning ascribed in Section 97-5-27, Mississippi Code of 1972.

SECTION 5. The following shall be codified as Section 97-3-54.5, Mississippi Code of 1972:

97-3-54.5 Use of undercover operative in detection of offense permitted. The fact that an undercover operative or law enforcement officer was involved in any manner in the detection and investigation of an offense under this act shall not constitute a defense to a prosecution under this act.

SECTION 6. The following shall be codified as Section 97-3-54.6, Mississippi Code of 1972:

97-3-54.6. Injunctive and other relief for victims of trafficking; confidentiality. (1) Any circuit court may, after making due provision for the rights of trafficked persons, enjoin violations of the provisions of this act by issuing appropriate orders and judgments, including, but not limited to:

(a) Ordering any defendant to divest himself of any interest in any enterprise, including real property.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he was engaged in violation of the provisions of this act.
(c) Ordering the dissolution or reorganization of any enterprise.

(d) Ordering the suspension or revocation of a license or permit granted to any enterprise by any agency of the state.

(e) Ordering the forfeiture of the charter of a corporation organized under the laws of the state, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of this chapter and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

(2) Notwithstanding any provisions to the contrary in Section 99-37-1 et seq., the court shall order restitution to the victim for any offense under this chapter. The order of restitution under this section shall direct the defendant to pay the victim, through the appropriate court mechanism, the full amount of the victim's pecuniary damages. For the purposes of determining restitution, the term "victim" means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under eighteen (18) years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another
family member, or any other person appointed as suitable by the
court, but in no event shall the defendant be named as such a
representative or guardian. The court may order restitution even
if the victim is absent from the jurisdiction or unavailable.

(3) Any person who is injured by reason of any violation of
the provisions of this chapter shall have a cause of action
against any person or enterprise convicted of engaging in activity
in violation of this chapter for threefold the actual damages
sustained and, when appropriate, punitive damages. The person
shall also recover attorney's fees in the trial and appellate
courts and reasonable costs of investigation and litigation.

(4) The application of one (1) civil remedy under any
provision of this act shall not preclude the application of any
other remedy, civil or criminal, under this act or any other
provision of law. Civil remedies under this act are supplemental.

(5) At any time after a conviction under this act, the court
in which the conviction was entered may, upon appropriate motion,
vacate the conviction if the court finds the defendant's
participation in the offense was the result of being a victim.
Official documentation from a federal, state or local government
agency as to the defendant's status as a victim at the time of the
offense creates a presumption that the defendant's participation
in the offense was a result of being a victim, but official
documentation is not required to grant a motion under this
subsection.
(6) In a prosecution or civil action for damages for an offense under this act in which there is evidence that the alleged victim was subjected to sexual servitude, reputation or opinion evidence of past sexual behavior of the alleged victim is not admissible, unless admitted in accordance with the Mississippi Rules of Evidence.

(7) In any investigation or prosecution for an offense under this act, the responsible law enforcement agency or prosecutor's office are required to take all reasonable efforts to keep the identity of the victim and the victim's family confidential by ensuring that the names and identifying information of those individuals are not disclosed to the public.

SECTION 7. The following shall be codified as Section 97-3-54.7, Mississippi Code of 1972:

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.

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

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

(ii) Books, records, telecommunication equipment, or computers;
(iii) Money or weapons;
(iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;
(v) Negotiable instruments and securities;
(vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;
(vii) Any property traceable to proceeds from a violation; and
(viii) Any real property, including any right, 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.

(b) (i) No property used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the property is a consenting party or privy to a violation of this act;
(ii) No property is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the property is a leased or rented property, then the confiscating authority shall notify the owner of the property within five (5)
days of the confiscation or within five (5) days of forming reason
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
of Mississippi, the county, or the municipality, and may be filed
in the county in which the seizure is made, the county in which
the criminal prosecution is brought, or the county in which the
owner of the seized property is found. Forfeiture proceedings may
be brought in the circuit court or the county court if a county
court exists in the county and the value of the seized property is
within the jurisdictional limits of the county court as set forth
in Section 9-9-21. A copy of the petition shall be served upon
the following persons by service of process in the same manner as
in civil cases:

(i) The owner of the property, if address is
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 subject
to forfeiture at the time that it was seized.

(5) If the property is a motor vehicle susceptible of
titling under the Mississippi Motor Vehicle Title Law and if there
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.
(6) If the property is a motor vehicle and is not titled in the State of Mississippi, then an attempt shall be made to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, inquiry of the appropriate agency of that state shall be made as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device that affects the vehicle.

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

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

(9) If the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust that affects the property, the record owner and also any lienholder, secured party, other person who holds an interest in the property in the nature of a security interest, or holder of an encumbrance, mortgage or deed of trust that affects the property is to be named in the petition of forfeiture and is to be served with process in 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 court shall publish notice of the hearing addressed to "the Unknown Owner of ______________," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, and shall be served as
provided in Section 11-33-37, for publication of notice for 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.

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

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

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

(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 Relief for Victims of Human Trafficking Fund, and fifty percent (50%) shall be deposited and credited to the budget of the participating law enforcement agency.

(b) If more than 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 Relief for Victims of Human Trafficking Fund, twenty-five percent (25%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and twenty-five percent (25%) shall be divided equitably between or among the other participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the other participating law enforcement agencies cannot agree on the division of their twenty-five percent (25%), a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.
(14) All money forfeited under this section shall be divided, deposited and credited in the same manner as provided in subsection (13).

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

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

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

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

SECTION 8. The following shall be codified as Section 97-3-54.8, Mississippi Code of 1972:

97-3-54.8. Relief for Victims of Human Trafficking Fund.

(1) There is hereby created in the State Treasury a special fund
to be known as the "Relief for Victims of Human Trafficking Fund."

The fund shall be a continuing fund, not subject to fiscal year
limitations, and shall consist of:

(a) Monies appropriated by the Legislature;
(b) The interest accruing to the fund;
(c) Donations or grant funds received; and
(d) Monies received from such other sources as may be
provided by law.

(2) The monies in the Relief for Victims of Human
Trafficking Fund shall be used by the Mississippi Attorney
General's office solely for the administration of programs
designed to assist victims of human trafficking, to conduct
training on human trafficking to law enforcement, court personnel,
attorneys, and nongovernmental service providers, and to support
the duties of the statewide human trafficking coordinator as set
forth in this act.

SECTION 9. The following shall be codified as Section
97-3-54.9, Mississippi Code of 1972:

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

(1) There is created the position of statewide human trafficking
coordinator within the Attorney General's 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), including any recommendations, and summary of data collected under subsection (1)(c);

(h) Develop and implement rules and regulations pertaining to the use of the Relief for Victims of Human Trafficking Fund to support services for victims of human trafficking in Mississippi;

(i) Assist in the creation and operations of local human trafficking task forces or working groups around the state, including serving on a task force; and

(j) 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.

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

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

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

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

SECTION 10. Section 97-29-49, Mississippi Code of 1972, is amended as follows:

97-29-49. * * * (1) A person commits the misdemeanor of prostitution if the person knowingly or intentionally performs, or offers or agrees to perform, sexual intercourse or sexual conduct
for money or other property. "Sexual conduct" includes
cunnilingus, fellatio, masturbation of another, anal intercourse
or the causing of penetration to any extent and with any object or
body part of the genital or anal opening of another.
(2) Any person violating the provisions of this section
shall, upon conviction, be punished by a fine not exceeding Two
Hundred Dollars ($200.00) or by confinement in the county jail for
not more than six (6) months, or both.
(3) In addition to the mandatory reporting provisions
contained in Section 97-5-51, any law enforcement officer who
takes a minor under eighteen (18) years of age into custody for
suspected prostitution shall immediately make a report to the
Department of Human Services as required in Section 43-21-353 for
suspected child sexual abuse or neglect, and the department shall
commence an initial investigation into suspected child sexual
abuse or neglect as required in Section 43-21-353.
(4) If it is determined that a person suspected of or
charged with engaging in prostitution is engaging in those acts as
a direct result of being a trafficked person, as defined by
Section 97-3-54.4, that person shall be immune from prosecution
for prostitution as a juvenile or adult and, if a minor, the
provisions of Section 97-3-54.1(4) shall be applicable.

SECTION 11. Section 97-29-51, Mississippi Code of 1972, is
amended as follows:
97-29-51. ** * * * (1) ** A person commits the misdemeanor of procuring the services of a prostitute if the person knowingly or intentionally pays, or offers or agrees to pay, money or other property to another person for having engaged in, or on the understanding that the other person will engage in, sexual intercourse or sexual conduct with the person or with any other person. "Sexual conduct" includes cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object or body part of the genital or anal opening of another.

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

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

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

(2) (a) A person commits the felony of promoting 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;

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

(c) However, in all cases, if the person whose services are promoted in violation of this subsection (2) is a minor under eighteen (18) years of age, the person convicted shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars ($50,000.00) nor more than Five Hundred Thousand Dollars ($500,000.00), or both. There is no requirement that the defendant have actual knowledge of the age of the person and consent of a minor is not a defense to prosecution under this section.
(3) If it is determined that a person suspected of or charged with promoting prostitution is a trafficked person, as defined by Section 97-3-54.4, that fact shall be considered a mitigating factor in any prosecution of that person for prostitution, and the person shall be referred to appropriate resources for assistance. If it is determined that a person suspected of or charged with promoting prostitution is a minor under eighteen (18) years of age who meets the definition of a trafficked person as defined in Section 97-3-54.4, the minor is immune from prosecution for promoting prostitution as a juvenile or adult and provisions of Section 97-3-54.1(4) shall be applicable.

(4) Any partnership, association, corporation or other entity violating any provision of subsection (2) against the promotion of prostitution shall, upon conviction, be punished by a fine not exceeding Fifty Thousand Dollars ($50,000.00). If the person whose services are promoted is under eighteen (18) years of age, the partnership, association, corporation or other legal entity convicted shall be punished by a fine not exceeding One Million Dollars ($1,000,000.00). There is no requirement that the defendant have knowledge of the age of the person. Consent of a 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 Protection from Human Trafficking Act,
Sections 97-3-54 et seq.

SECTION 12. Section 97-29-53, Mississippi Code of 1972,
which sets the penalty for prostitution and solicitation, is
repealed.

SECTION 13. Section 97-43-3, Mississippi Code of 1972, is
amended as follows:

790 97-43-3. The following terms shall have the meanings
791 ascribed to them herein unless the context requires otherwise:

(a) "Racketeering activity" means to commit, to attempt
to commit, to conspire to commit, or to solicit, coerce or
intimidate another person to commit any crime which is chargeable
under the following provisions of the Mississippi Code of 1972:

(1) Section 97-19-71, which relates to fraud in
connection with any state or federally funded assistance programs.

(2) Section 75-71-735, which relates to violations
of the Mississippi Securities Act.

(3) Sections 45-13-105, 45-13-109, 97-37-23 and
97-37-25, which relate to unlawful possession, use and
transportation of explosives.

(4) Sections 97-3-19 and 97-3-21, which relate to
murder.
(5) Section 97-3-7(2), which relates to aggravated assaults.

(6) Section 97-3-53, which relates to kidnapping.

(7) Sections 97-3-73 through 97-3-83, which relate to robbery.

(8) Sections 97-17-19 through 97-17-37, which relate to burglary.

(9) Sections 97-17-1 through 97-17-13, which relate to arson.

(10) Sections 97-29-49 ** and 97-29-51 **, which relate to prostitution.

(11) Sections 97-5-5 and 97-5-31 through 97-5-37, which relate to the exploitation of children and enticing children for concealment, prostitution or marriage.

(12) Section 41-29-139, which relates to violations of the Uniform Controlled Substances Law; provided, however, that in order to be classified as "racketeering activity," such offense must be punishable by imprisonment for more than one (1) year.

(13) Sections 97-21-1 through 97-21-63, which relate to forgery and counterfeiting.

(14) Sections 97-9-1 through 97-9-77, which relate to offenses affecting administration of justice.

(15) Sections 97-33-1 through 97-33-49, which relate to gambling and lotteries.
Sections 97-3-54 et seq., which relate to human trafficking.

(b) "Unlawful debt" means money or any other thing of value constituting principal or interest of a debt which is legally unenforceable in whole or in part because the debt was incurred or contracted in gambling activity in violation of state law or in the business of lending money at a rate usurious under state law, where the usurious rate is at least twice the enforceable rate.

(c) "Enterprise" means any individual, sole proprietorship, partnership, corporation, union or other legal entity, or any association or group of individuals associated in fact although not a legal entity. It includes illicit as well as licit enterprises and governmental, as well as other, entities.

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one (1) of such incidents occurred after the effective date of this chapter and that the last of such incidents occurred within five (5) years after a prior incident of racketeering conduct.

SECTION 14. Section 97-5-5, Mississippi Code of 1972, is amended as follows:
97-5-5. Every person who shall maliciously, willfully, or fraudulently lead, take, carry away, decoy or entice away, any child under the age of fourteen (14) years, with intent to detain or conceal such child from its parents, guardian, or other person having lawful charge of such child, or for the purpose of prostitution, concubinage, or marriage, shall, on conviction, be imprisoned in the * * * custody of the Department of Corrections for not * * * less than two (2) years nor more than ten (10) years, * * * or fined not more than * * * Ten Thousand Dollars ($10,000.00), or both. Investigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Sections 97-3-54 et seq.

SECTION 15. Section 97-5-7, Mississippi Code of 1972, is amended as follows:

97-5-7. Any person who shall persuade, entice or decoy away from its father or mother with whom it resides any child under the age of eighteen (18) years, being unmarried, for the purpose of employing such child without the consent of its parents, or one of them, shall upon conviction be punished by a fine of not more than * * * One Thousand Dollars ($1,000.00) or imprisoned in the county jail not more than * * * one (1) year, or both. Investigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of
other applicable criminal laws, including, but not limited to, the
Mississippi Human Trafficking Act, Sections 97-3-54 et seq.

SECTION 16. Section 97-5-27, Mississippi Code of 1972, is
amended as follows:

97-5-27. (1) Any person who intentionally and knowingly
disseminates sexually oriented material to any person under
eighteen (18) years of age shall be guilty of a misdemeanor and,
upon conviction, shall be fined for each offense not less than
Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars
($5,000.00) or be imprisoned for not more than one (1) year in the
county jail, or be punished by both such fine and imprisonment. A
person disseminates sexually oriented material within the meaning
of this section if he:

(a) Sells, delivers or provides, or offers or agrees to
sell, deliver or provide, any sexually oriented writing, picture,
record or other representation or embodiment that is sexually
oriented; or

(b) Presents or directs a sexually oriented play, dance
or other performance or participates directly in that portion
thereof which makes it sexually oriented; or

(c) Exhibits, presents, rents, sells, delivers or
provides, or offers or agrees to exhibit, present, rent or to
provide any sexually oriented still or motion picture, film,
filmstrip or projection slide, or sound recording, sound tape or
sound track or any matter or material of whatever form which is a
representation, embodiment, performance or publication that is
sexually oriented.

(2) For purposes of this section, any material is sexually
oriented if the material contains representations or descriptions,
actual or simulated, of masturbation, sodomy, excretory functions,
lewd exhibition of the genitals or female breasts, sadomasochistic
abuse (for the purpose of sexual stimulation or gratification),
homosexuality, lesbianism, bestiality, sexual intercourse, or
physical contact with a person's clothed or unclothed genitals,
pubic area, buttocks, or the breast or breasts of a female for the
purpose of sexual stimulation, gratification or perversion.

(3) (a) A person is guilty of computer luring when:

(i) Knowing the character and content of any
communication of sexually oriented material, he intentionally uses
any computer communication system allowing the input, output,
examination or transfer of computer data or computer programs from
one (1) computer to another, to initiate or engage in such
communication with a person under the age of eighteen (18); and

(ii) By means of such communication he importunes,
invites or induces a person under the age of eighteen (18) years
to engage in sexual intercourse, deviant sexual intercourse or
sexual contact with him, or to engage in a sexual performance,
obscene sexual performance or sexual conduct for his benefit.
(b) A person who engages in the conduct proscribed by this subsection (3) is presumed to do so with knowledge of the character and content of the material.

(c) In any prosecution for computer luring, it shall be a defense that:

(i) The defendant made a reasonable effort to ascertain the true age of the minor and was unable to do so as a result of actions taken by the minor; or

(ii) The defendant has taken, in good faith, reasonable, effective and appropriate actions under the circumstances to restrict or prevent access by minors to the materials prohibited, which may involve any appropriate measures to restrict minors from access to such communications, including any method which is feasible under available technology; or

(iii) The defendant has restricted access to such materials by requiring use of a verified credit card, debit account, adult access code or adult personal identification number; or

(iv) The defendant has in good faith established a mechanism such that the labeling, segregation or other mechanism enables such material to be automatically blocked or screened by software or other capabilities reasonably available to responsible adults wishing to effect such blocking or screening and the defendant has not otherwise solicited minors not subject to such
screening or blocking capabilities to access that material or to circumvent any such screening or blocking.

(d) In any prosecution for computer luring:

(i) No person shall be held to have violated this subsection (3) solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software or other related capabilities that are incidental to providing such access or connection that do not include the creation of the content of the communication.

(ii) No employer shall be held liable for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency or the employer, having knowledge of such conduct, authorizes or ratifies such conduct, or recklessly disregards such conduct.

(iii) The limitations provided by this paragraph (d) shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate such provisions, or who knowingly advertises the availability of such communications, nor to a person who provides access or connection to a facility, system or network engaged in the violation of such provisions that is owned or controlled by such person.

(e) Computer luring is a felony, and any person convicted thereof shall be punished by commitment to the custody
of the Department of Corrections for a term not to exceed three years and by a fine not to exceed Ten Thousand Dollars ($10,000.00).

(4) Investigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Section 97-3-54 et seq.

SECTION 17. Section 97-5-31, Mississippi Code of 1972, is amended as follows:

97-5-31. As used in Sections 97-5-33 through 97-5-37, the following words and phrases shall have the meanings given to them in this section:

(a) "Child" means any individual who has not attained the age of eighteen (18) years.

(b) "Sexually explicit conduct" means actual or simulated:

(i) Oral genital contact, oral anal contact, or sexual intercourse as defined in Section 97-3-65, whether between persons of the same or opposite sex;

(ii) Bestiality;

(iii) Masturbation;

(iv) Sadistic or masochistic abuse;

(v) Lascivious exhibition of the genitals or pubic area of any person; or
(vi) Fondling or other erotic touching of the genitals, pubic area, buttocks, anus or breast.

(c) "Producing" means producing, directing, manufacturing, issuing, publishing or advertising.

(d) "Visual depiction" includes, without limitation, developed or undeveloped film and video tape or other visual unaltered reproductions by computer.

(e) "Computer" has the meaning given in Title 18, United States Code, Section 1030.

(f) "Simulated" means any depicting of the genitals or rectal areas that gives the appearance of sexual conduct or incipient sexual conduct.

SECTION 18. Section 99-1-5, Mississippi Code of 1972, as amended by House Bill No. 709, 2013 Regular Session, is amended as follows:

99-1-5. The passage of time shall never bar prosecution against any person for the offenses of murder, manslaughter, aggravated assault, **aggravated domestic violence**, kidnapping, arson, burglary, forgery, counterfeiting, robbery, larceny, rape, embezzlement, obtaining money or property under false pretenses or by fraud, felonious abuse or battery of a child as described in Section 97-5-39, touching or handling a child for lustful purposes as described in Section 97-5-23, sexual battery of a child as described in Section 97-3-95(1)(c), (d) or (2), **exploitation** of children as described in Section 97-5-33, **promoting**
prostitution under Section 97-29-51(2) when the person involved is a minor, or any human trafficking offense as described in Section 97-3-54.1(1)(a), (1)(b) or (1)(c), 97-3-54.2 or 97-3-54.3. A person shall not be prosecuted for conspiracy, as described in Section 97-1-1, for felonious assistance-program fraud, as described in Section 97-19-71, or for felonious abuse of vulnerable persons, as described in Sections 43-47-18 and 43-47-19, unless the prosecution for the offense is commenced within five (5) years next after the commission thereof. A person shall not be prosecuted for larceny of timber as described in Section 97-17-59, unless the prosecution for the offense is commenced within six (6) years next after the commission thereof. A person shall not be prosecuted for any other offense not listed in this section unless the prosecution for the offense is commenced within two (2) years next after the commission thereof. Nothing contained in this section shall bar any prosecution against any person who shall abscond or flee from justice, or shall absent himself from this state or out of the jurisdiction of the court, or so conduct himself that he cannot be found by the officers of the law, or that process cannot be served upon him.

SECTION 19. This act shall take effect and be in force from and after July 1, 2013.