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HOUSE BILL 304

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Gail Chasey

AN ACT

RELATING TO HUMAN TRAFFICKING; PROVIDING FOR CIVIL REMEDIES;
PROVIDING FOR CERTAIN STATE BENEFITS AND SERVICES FOR HUMAN
TRAFFICKING VICTIMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] HUMAN TRAFFICKING--CIVIL REMEDY
FOR HUMAN TRAFFICKING VICTIMS.--

A. A human trafficking victim may bring a civil
action in any court of competent jurisdiction for actual
damages, compensatory damages, punitive damages, injunctive
relief or any other appropriate relief. Where the court finds
that a defendant's actions were willful and malicious, the
court may award treble damages to the plaintiff. A prevailing
plaintiff is also entitled to recover reasonable attorney fees
and costs.

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1 B. A civil action pursuant to this section shall be
2 forever barred unless the action is filed within ten years from
3 the date on which:

4 (1) the defendant's human trafficking actions
5 occurred; or

6 (2) the victim attains eighteen years of age
7 if the victim was a minor when the defendant's actions
8 occurred.

9 **SECTION 2.** Section 30-52-1 NMSA 1978 (being Laws 2008,
10 Chapter 17, Section 1) is amended to read:

11 "30-52-1. HUMAN TRAFFICKING.--

12 A. Human trafficking consists of a person
13 knowingly:

14 (1) recruiting, soliciting, enticing,
15 transporting or obtaining by any means another person with the
16 intent or knowledge that force, fraud or coercion will be used
17 to subject the person to labor, services or commercial sexual
18 activity;

19 (2) recruiting, soliciting, enticing,
20 transporting or obtaining by any means a person under the age
21 of eighteen years with the intent or knowledge that the person
22 will be caused to engage in commercial sexual activity; or

23 (3) benefiting, financially or by receiving
24 anything of value, from the labor, services or commercial
25 sexual activity of another person with the knowledge that

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1 force, fraud or coercion was used to obtain the labor, services
2 or commercial sexual activity.

3 B. The attorney general and the district attorney
4 in the county of jurisdiction have concurrent jurisdiction to
5 enforce the provisions of this section.

6 C. Whoever commits human trafficking is guilty of a
7 third degree felony; except if the victim is under the age of:

8 (1) sixteen, the person is guilty of a second
9 degree felony; or

10 (2) thirteen, the person is guilty of a first
11 degree felony.

12 D. Prosecution pursuant to this section shall not
13 prevent prosecution pursuant to any other provision of the law
14 when the conduct also constitutes a violation of that other
15 provision.

16 E. In a prosecution pursuant to this section, a
17 human trafficking victim shall not be charged with accessory to
18 the crime of human trafficking; nor shall the victim be charged
19 with crimes committed due to coercion by a person committing
20 human trafficking.

21 F. A person convicted of human trafficking shall,
22 in addition to any other punishment, be ordered to make
23 restitution to the victim for the gross income or value of the
24 victim's labor or services and any other actual damages in
25 accordance with Section 31-17-1 NMSA 1978.

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1 G. As used in this section:

2 (1) "coercion" means:

3 (a) causing or threatening to cause harm
4 to any person;

5 (b) using or threatening to use physical
6 force against any person;

7 (c) abusing or threatening to abuse the
8 law or legal process;

9 (d) threatening to report the
10 immigration status of any person to governmental authorities;
11 or

12 (e) knowingly destroying, concealing,
13 removing, confiscating or retaining any actual or purported
14 government document of any person; and

15 (2) "commercial sexual activity" means any
16 sexual act or sexually explicit exhibition for which anything
17 of value is given, promised to or received by any person."

18 SECTION 3. Section 30-52-2 NMSA 1978 (being Laws 2008,
19 Chapter 17, Section 2) is amended to read:

20 "30-52-2. HUMAN TRAFFICKING--BENEFITS AND SERVICES FOR
21 HUMAN TRAFFICKING VICTIMS.--

22 A. Human trafficking victims found in the state
23 shall be eligible for benefits and services from the state
24 until the victim qualifies for benefits and services authorized
25 by the federal Victims of Trafficking and Violence Protection

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1 Act of 2000; provided that the victim cooperates in the
2 investigation or prosecution of the person charged with the
3 crime of human trafficking. Benefits and services shall be
4 provided to eligible human trafficking victims as quickly as
5 can reasonably be arranged regardless of immigration status and
6 ~~[may]~~ shall include, when appropriate to a particular case:

- 7 (1) case management;
- 8 (2) emergency temporary housing;
- 9 (3) health care;
- 10 (4) mental health counseling;
- 11 (5) drug addiction screening and treatment;
- 12 (6) language interpretation, translation
13 services and English language instruction;

14 (7) job training, job placement assistance and
15 post-employment services for job retention;

- 16 (8) child care;
- 17 (9) legal assistance;
- 18 (10) state-funded cash assistance;
- 19 (11) food assistance;

20 ~~[(8)]~~ (12) services to assist the victim and
21 the victim's family members; ~~[or]~~ and

22 ~~[(9)]~~ (13) other general assistance services
23 and benefits as determined by the children, youth and families
24 department or the human services department.

25 B. A human trafficking victim advocate or a victim

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1 advocate from the district attorney's office shall be provided
2 immediately upon identification of a human trafficking victim.

3 C. A victim's ability to cooperate shall be
4 determined by the court if that issue is raised by a human
5 trafficking victim advocate or a victim advocate from the
6 district attorney's office.

7 D. The attorney general shall coordinate state and
8 local law enforcement agencies to provide a human trafficking
9 victim or the victim's family members protection from
10 retaliatory action immediately upon identifying the presence in
11 the state of a victim who offers state or local law enforcement
12 agencies information regarding a perpetrator of human
13 trafficking.

14 E. The prosecuting authority shall take all
15 reasonable steps within its authority to provide a human
16 trafficking victim with:

17 (1) all necessary documentation required
18 pursuant to federal law for an adjustment of immigration status
19 that applies to that victim; and

20 (2) assistance in accessing civil legal
21 services providers who are able to petition for adjustment of
22 immigration status on behalf of the victim.

23 ~~[B-]~~ F. As used in this section:

24 (1) "human trafficking victim" means a person
25 subjected to human trafficking ~~[by a person charged in New~~

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1 ~~Mexico with the crime of human trafficking~~]; and

2 (2) "human trafficking victim advocate" means
3 a person provided by a state or nonprofit agency with
4 experience in providing services for victims of crime through a
5 nonprofit agency with expertise in providing services for
6 victims of crime."

7 SECTION 4. Section 31-22-8 NMSA 1978 (being Laws 1981,
8 Chapter 325, Section 8, as amended) is amended to read:

9 "31-22-8. CRIMES ENUMERATED.--

10 A. The crimes to which the Crime Victims Reparation
11 Act applies and for which reparation to victims may be made are
12 the following enumerated offenses and all other offenses in
13 which any enumerated offense is necessarily included:

- 14 (1) arson resulting in bodily injury;
- 15 (2) aggravated arson;
- 16 (3) aggravated assault or aggravated battery;
- 17 (4) dangerous use of explosives;
- 18 (5) negligent use of a deadly weapon;
- 19 (6) murder;
- 20 (7) voluntary manslaughter;
- 21 (8) involuntary manslaughter;
- 22 (9) kidnapping;
- 23 (10) criminal sexual penetration;
- 24 (11) criminal sexual contact of a minor;
- 25 (12) homicide by vehicle or great bodily

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- 1 injury by vehicle, as provided in Section 66-8-101 NMSA 1978;
- 2 (13) abandonment or abuse of a child;
- 3 (14) aggravated indecent exposure, as provided
- 4 in Section 30-9-14.3 NMSA 1978; ~~and~~
- 5 (15) aggravated stalking, as provided in
- 6 Section 30-3A-3.1 NMSA 1978; and
- 7 (16) human trafficking.

8 B. No award shall be made for any loss or damage to
9 property."

10 SECTION 5. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2013.