

ACT 203

S.B. NO. 616

A Bill for an Act Relating to Prostitution.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that those who promote prostitution leave life-long physical, emotional, and financial scars on their victims, often in the form of personal injury, disease, mental or emotional harm, and medical and rehabilitation expenses, as well as the loss of past or future income or earning capacity. In some cases, even death may result.

Although the criminal justice system is an important weapon against prostitution and the promotion of prostitution, the civil justice system can and must also be used. The civil justice system can provide an avenue of compensation for those victims who have suffered harm as a result of the promotion of prostitution. Those who promote prostitution should bear the cost of the harm, including noneconomic damages, caused by that activity in the community.

The legislature finds that this is especially true for those who coerce an individual into prostitution. Under current law, if a person knowingly compels a person by criminal coercion to engage in prostitution, or profits from another's coercive conduct, that person commits the felony offense of promoting prostitution in the first degree.

The legislature further finds that the added threat of civil liability to those who coerce individuals into prostitution, or profit by that coercion serve as an

additional deterrent to the promotion of prostitution. A person who has substantial assets is likely to decide that the added cost of engaging in that activity is not worth the benefit. This Act therefore provides a mechanism whereby the cost of the injuries caused by coercing a person into prostitution will be borne by those who promote prostitution. The legislature finds that this Act is necessary to protect the health, safety, and welfare of the people of this State.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
LIABILITY FOR COERCION INTO PROSTITUTION**

§ -1 **Title.** This Act may be cited as the Prostitution Coercion Liability Act.

§ -2 **Definitions.** As used in this chapter:

“Coerce” means to use or threaten to use any form of domination, restraint, or control for the purpose of causing an individual to engage in or remain in prostitution or to relinquish earnings derived from prostitution. Coercion exists if the totality of the circumstances establish the existence of domination, restraint, or control that would have the reasonably foreseeable effect of causing an individual to engage in or remain in prostitution or to relinquish earnings derived from prostitution.

“Prostitution” has the same meaning as provided in section 712-1200.

“Promoting prostitution” means promoting prostitution in the first or second degree, as provided in sections 712-1202 and 712-1203, respectively.

§ -3 **Cause of action for coercion into prostitution.** An individual has a cause of action against a person who:

- (1) Coerced the individual into prostitution;
- (2) Coerced the individual to remain in prostitution;
- (3) Used coercion to collect or receive any of the individual’s earnings derived from prostitution; or
- (4) Hired, or attempted to hire the individual to engage in prostitution, when a reasonable person would believe that the individual was coerced into prostitution by another person.

Paragraph (3) shall not apply to minor children who are dependent on the individual and who may have benefited from or been supported by the individual’s earnings derived from prostitution.

§ -4 **Evidence.** Acts that may serve as evidence in support of a claim under section -3 include but are not limited to:

- (1) Physical force or threats of physical force;
- (2) Physical or mental torture;
- (3) Leading an individual to believe that the individual will be protected from violence or arrest;
- (4) Kidnapping;
- (5) Blackmail;
- (6) Extortion;
- (7) Threat of criminal prosecution for any violation of the law;
- (8) Threat of interference with parental rights;
- (9) Restriction or interference with speech or communication with others;
- (10) Isolation;

- (11) Exploitation of pornographic performance;
- (12) Interference with opportunities for education;
- (13) Destroying property of the individual;
- (14) Restriction of movement; or
- (15) In the case of a person coerced while a minor:
 - (a) Exploiting needs for food, shelter, safety, affection, or intimate relationship;
 - (b) Exploiting a condition of developmental disability, cognitive limitation, affective disorder, or substance dependency;
 - (c) Promise of legal benefit, such as posting bail, procuring an attorney, protecting from arrest, or promising unionization;
 - (d) Promise of financial rewards; or
 - (e) Defining the terms of an individual's employment or working conditions in a manner that is likely to lead to the individual's use in prostitution.

§ **-5 Damages.** A person entitled to bring an action under section -3 may recover all of the following damages:

- (1) Economic damages proximately caused by coercion into prostitution;
- (2) Noneconomic damages proximately caused by coercion into prostitution;
- (3) Exemplary damages;
- (4) Reasonable attorney's fees; and
- (5) Costs of suit, including reasonable expenses for expert testimony.

§ **-6 Joinder of parties.** (1) In the discretion of the court, two or more persons may join in one action under this chapter as plaintiffs if their respective actions involve an individual who engages in promoting prostitution by coercion.

(2) In the discretion of the court, two or more persons may be joined in one action under this chapter as defendants if those persons may be liable to at least one plaintiff.

§ **-7 Statute of limitations.** (1) A claim under this chapter may not be brought against a person more than two years after an act of promoting prostitution by coercion by that person.

- (2) The limitation period provided for in this chapter is tolled:
 - (a) During the minority of the individual who engages in prostitution; or
 - (b) Any time there is a criminal offense investigation being actively conducted against the defendant by a governmental agency or there is a criminal offense charge, information, or indictment pending against the defendant.

§ **-8 Stay of action.** On motion by a governmental agency involved in an investigation or prosecution for promoting prostitution, an action brought under this chapter shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.

§ **-9 Other remedies preserved.** The remedies provided under this chapter do not restrict the right of any person to bring an action under other law, including common law, to recover damages arising out of the use of the individual in prostitution or the coercion incident to the individual being used in prostitution; nor does this chapter limit or restrict the liability of any person under other law."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. If any provision of this Act or the application of any provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to any other person or circumstance shall not be affected by that invalidation.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 2, 1999.)