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# A BILL FOR AN ACT

RELATING TO THE HAWAII PENAL CODE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 707, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4                               "PART       .   LABOR TRAFFICKING

5           §707-A Definitions. As used in this part:

6           "Labor" means work of economic or financial value.

7           "Services" means a relationship between a person and the  
8 actor in which the person performs activities under the  
9 supervision of or for the benefit of the actor or a third party.

10          "Venture" means a business relationship between two or more  
11 parties to undertake economic activity together.

12          "Victim" means the person against whom an offense specified  
13 in section 707-B or 707-C has been committed.

14          §707-B Labor trafficking in the first degree. (1) A  
15 person commits the offense of labor trafficking in the first  
16 degree if the person knowingly provides or obtains, or attempts  
17 to provide or obtain, another person for labor or services, by  
18 any of the following means:



- 1 (a) Extortion as described in section 707-764;
- 2 (b) Kidnapping as described in section 707-720;
- 3 (c) Unlawful imprisonment as described in section 707-721
- 4 or 707-722;
- 5 (d) Force, threat, or intimidation;
- 6 (e) Deception, as defined in section 708-800, or fraud,
- 7 which means making material false statements,
- 8 misstatements, or omissions to induce or maintain the
- 9 person to engage or continue to engage in the labor or
- 10 services;
- 11 (f) Requiring that labor or services be performed to
- 12 retire, repay, or service a real or purported debt, if
- 13 performing the labor or services is the exclusive
- 14 method allowed to retire, repay, or service the debt
- 15 and the indebted person is required to repay the debt
- 16 with direct labor in place of currency; provided that
- 17 this shall not include labor or services performed by
- 18 a child for the child's parent or guardian;
- 19 (g) Assault in violation of either section 707-710,
- 20 707-711, or 707-712;



- 1 (h) Withholding any of the trafficked person's government-
- 2 issued identification documents with the intent to
- 3 impede the movement of the person;
- 4 (i) Using any scheme, plan, or pattern intended to cause
- 5 the person to believe that if the person did not
- 6 perform the labor or services, then the person or a
- 7 friend or a member of the person's family would suffer
- 8 serious harm, serious financial loss, or physical
- 9 restraint; or
- 10 (j) Using or threatening to use any form of domination,
- 11 restraint, or control over the person which, given the
- 12 totality of the circumstances, would have the
- 13 reasonably foreseeable effect of causing the person to
- 14 engage in or to remain engaged in the labor or
- 15 services.

16 (2) Labor trafficking in the first degree is a class A  
17 felony.

18 **§707-C Labor trafficking in the second degree.** (1) A  
19 person commits the offense of labor trafficking in the second  
20 degree if the person knowingly:

- 21 (a) Acts as an individual or uses a licensed business or
- 22 business enterprise, that aids another in a venture



1 knowing that the other person in that venture is  
2 committing the offense of labor trafficking in the  
3 first degree; or

4 (b) Benefits, financially or by receiving something of  
5 value, from participation in a venture knowing or in  
6 reckless disregard of the fact that another person has  
7 engaged in any act in violation of paragraph (a) in  
8 the course of that venture or that another person in  
9 that venture is committing the offense of labor  
10 trafficking in the first degree.

11 (2) Labor trafficking in the second degree is a class B  
12 felony; provided that if a violation of subsection (1) involves  
13 kidnapping or an attempt to kidnap, aggravated sexual abuse or  
14 the attempt to commit aggravated sexual abuse, or an attempt to  
15 cause the death of a person, or if a death results, the offense  
16 shall be a class A felony.

17 (3) Upon conviction of a defendant under subsection (1),  
18 the court shall also order that any and all business licenses  
19 issued by the State be revoked for the business or enterprise  
20 that the defendant used to aid in the offense of labor  
21 trafficking in the second degree; provided that the court, in  
22 its discretion, may reinstate the business license upon petition



1 to the court by any remaining owner or partner of the business  
2 or enterprise who was not convicted of an offense under this  
3 section or section 707-B.

4 **§707-D Additional sentencing considerations; victims held**  
5 **in servitude.** In addition to the factors set forth in sections  
6 706-606 and 706-621, when determining the particular sentence to  
7 be imposed on a defendant convicted under section 707-B or  
8 707-C, the court shall consider:

- 9 (a) The time for which the victim was held in servitude;  
10 and  
11 (b) The number of victims involved in the offense for  
12 which the defendant is convicted.

13 **§707-E Extended terms of imprisonment; labor trafficking**  
14 **offenses.** If a person is found guilty of a violation under  
15 section 707-B or 707-C and the victim of the offense suffered  
16 bodily injury, the person may be sentenced to an extended  
17 indeterminate term of imprisonment as described in this section.  
18 Subject to the procedures set forth in section 706-664, the  
19 court may impose, in addition to the indeterminate term of  
20 imprisonment provided for the grade of offense, an additional  
21 indeterminate term of imprisonment as follows:



- 1 (a) Bodily injury - an additional two years of
- 2 imprisonment;
- 3 (b) Serious bodily injury - an additional five years of
- 4 imprisonment;
- 5 (c) Permanent or life-threatening bodily injury - an
- 6 additional fifteen years of imprisonment; or
- 7 (d) If death results, the defendant shall be sentenced in
- 8 accordance with the homicide statute relevant for the
- 9 level of criminal intent.

10 When ordering an extended term sentence, the court shall impose  
11 the maximum length of imprisonment. The minimum length of  
12 imprisonment for an extended term sentence under paragraph (a),  
13 (b), (c), or (d) shall be determined by the Hawaii paroling  
14 authority in accordance with section 706-669.

15 **§707-F Restitution for victims of labor trafficking. (1)**

16 In addition to any other penalty, and notwithstanding a victim's  
17 failure to request restitution under section 706-646(2), the  
18 court shall order restitution to be paid to the victim,  
19 consisting of an amount that is the greater of:

- 20 (a) The total gross income or value to the defendant of
- 21 the victim's labor or services; or



1 (b) The value of the victim's labor or services, as  
2 guaranteed under the minimum wage provisions of  
3 chapter 387 or the Fair Labor Standards Act of 1938,  
4 P.L. 75-718, Title 29 United States Code Sections 201  
5 through 219, inclusive, whichever is greater.

6 (2) The return of the victim to the victim's home country  
7 or other absence of the victim from the jurisdiction shall not  
8 relieve the defendant of the defendant's restitution obligation.

9 **§707-G Nonpayment of wages.** (1) A person commits the  
10 offense of nonpayment of wages if the person, in the capacity as  
11 an employer of an employee, wilfully or with intent to defraud  
12 fails or refuses to pay wages to the employee. In addition to  
13 any other penalty, a person convicted of nonpayment of wages  
14 shall be fined not less than \$2,000 nor more than \$10,000 for  
15 each offense.

16 (2) Nonpayment of wages is:

17 (a) A class C felony, if the amount owed to the employee  
18 is equal to or greater than \$2,000 or if the defendant  
19 convicted of nonpayment of wages falsely denies the  
20 amount or validity of the wages owed; or

21 (b) A misdemeanor, if the amount owed to the employee is  
22 less than \$2,000.



1           (3) A person commits a separate offense under this section  
2 for each pay period during which the employee earned wages that  
3 the person failed or refused to pay the employee. If no set pay  
4 periods were agreed upon between the person and the employee at  
5 the time the employee commenced the work, then each "pay period"  
6 shall be deemed to be bi-weekly.

7           (4) In addition to any other penalty, the court shall  
8 order restitution to be paid to the employee, consisting of an  
9 amount that is the greater of:

10           (a) The wages earned by the employee that were unpaid by  
11 the person convicted of nonpayment of wages; or

12           (b) The value of the employee's labor or services, as  
13 guaranteed under the minimum wage provisions of  
14 chapter 387 or the Fair Labor Standards Act of 1938,  
15 P.L. 75-718, Title 29 United States Code Sections 201  
16 through 219, inclusive, whichever is greater.

17           (5) An employee who is the victim of nonpayment of wages  
18 may bring a civil action to recover all wages owed by the  
19 defendant convicted of nonpayment of wages.

20           (6) For purposes of this section:

21           "Employee" means any person working for another for hire,  
22 including an individual employed in domestic service or at a





1 family's or person's home, any individual employed by the  
2 individual's parent or spouse, or an independent contractor.

3 "Person" includes any individual, partnership, association,  
4 joint-stock company, trust, corporation, the personal  
5 representative of the estate of a deceased individual, or the  
6 receiver, trustee, or successor of any of the same, employing  
7 any persons, but shall not include the United States.

8 "Wages" means compensation for labor or services rendered  
9 by an employee, whether the amount is determined on a time,  
10 task, piece, commission, or other basis of calculation.

11 **§707-H Unlawful conduct with respect to documents.** (1) A  
12 person commits unlawful conduct with respect to documents if the  
13 person knowingly:

14 (a) Destroys, conceals, removes, confiscates, or possesses  
15 any actual or purported government identification  
16 document of another person:

17 (i) In the course of a violation or attempt to commit  
18 an offense under section 707-B or 707-C; or

19 (ii) To prevent or restrict, or in an attempt to  
20 prevent or restrict, without lawful authority,  
21 the ability of the other person to move or  
22 travel, in order to maintain the labor or



1 services of the other person, when the person is  
2 or has been the victim of an offense under  
3 section 707-B or 707-C; or

4 (b) Destroys, conceals, removes, or confiscates any actual  
5 or purported government identification document of an  
6 employee.

7 (2) Unlawful conduct with respect to documents is a  
8 class C felony."

9 SECTION 2. Section 712A-4, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§712A-4 Covered offenses. Offenses for which property is  
12 subject to forfeiture under this chapter are:

13 (a) All offenses [~~which~~] that specifically authorize  
14 forfeiture;

15 (b) Murder, kidnapping, labor trafficking, gambling,  
16 criminal property damage, robbery, bribery, extortion,  
17 theft, unauthorized entry into motor vehicle,  
18 burglary, money laundering, trademark counterfeiting,  
19 insurance fraud, promoting a dangerous, harmful, or  
20 detrimental drug, commercial promotion of marijuana,  
21 [~~unlawful~~] methamphetamine trafficking, manufacturing  
22 of a controlled substance with a child present,



1 promoting child abuse, or electronic enticement of a  
2 child [~~which~~] that is chargeable as a felony offense  
3 under state law;

4 (c) The manufacture, sale, or distribution of a controlled  
5 substance in violation of chapter 329, promoting  
6 detrimental drugs or intoxicating compounds, promoting  
7 pornography, promoting pornography for minors, or  
8 promoting prostitution, which is chargeable as a  
9 felony or misdemeanor offense, but not as a petty  
10 misdemeanor, under state law; and

11 (d) The attempt, conspiracy, solicitation, coercion, or  
12 intimidation of another to commit any offense for  
13 which property is subject to forfeiture."

14 SECTION 3. Section 803-44, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§803-44 Application for court order to intercept wire,**  
17 **oral, or electronic communications.** The attorney general of  
18 this State, or a designated deputy attorney general in the  
19 attorney general's absence or incapacity, or the prosecuting  
20 attorney of each county, or a designated deputy prosecuting  
21 attorney in the prosecuting attorney's absence or incapacity,  
22 may make application to a designated judge or any other circuit



1 court judge or district court judge, if a circuit court judge  
2 has not been designated by the chief justice of the Hawaii  
3 supreme court, or is otherwise unavailable, in the county where  
4 the interception is to take place, for an order authorizing or  
5 approving the interception of wire, oral, or electronic  
6 communications, and such court may grant in conformity with  
7 section 803-46 an order authorizing[7] or approving the  
8 interception of wire, oral, or electronic communications by  
9 investigative or law enforcement officers having responsibility  
10 for the investigation of the offense as to which the application  
11 is made, if the interception might provide or has provided  
12 evidence of:

- 13 (1) Murder;
- 14 (2) Kidnapping;
- 15 (3) Labor trafficking in the first degree;
- 16 (4) Labor trafficking in the second degree;
- 17 [~~3~~] (5) Felony criminal property damage involving the  
18 danger of bodily injury as defined in section 707-700;
- 19 [~~4~~] (6) Distribution of dangerous, harmful, or  
20 detrimental drugs; or
- 21 [~~5~~] (7) Conspiracy to commit one or more of the above; or  
22 [involving



1       ~~(6) Organized]~~ (8) Involvement of organized crime and any  
2       of the following felony offenses:

3           (A) Extortion;

4           (B) Bribery of a juror, of a witness, or of a police  
5           officer;

6           (C) Receiving stolen property; ~~and]~~

7           (D) Gambling; and

8           (E) Money laundering."

9       SECTION 4. Section 842-1, Hawaii Revised Statutes, is  
10       amended by amending the definitions of "organized crime" and  
11       "racketeering activity" to read as follows:

12            "Organized crime" means any combination or conspiracy to  
13       engage in criminal activity as a significant source of income or  
14       livelihood, or to violate, aid, or abet the violation of  
15       criminal laws relating to prostitution, gambling, loan sharking,  
16       drug abuse, illegal drug distribution, counterfeiting,  
17       extortion, labor trafficking, or corruption of law enforcement  
18       officers or other public officers or employers.

19            "Racketeering activity" means any act or threat  
20       involving[7] but not limited to murder, kidnapping, gambling,  
21       criminal property damage, robbery, bribery, extortion, labor  
22       trafficking, theft, or prostitution, or any dealing in narcotic



1 or other dangerous drugs [~~which~~] that is chargeable as a crime  
2 under state law and punishable by imprisonment for more than one  
3 year."

4 SECTION 5. In codifying the new sections added by  
5 section 1 of this Act, the revisor of statutes shall substitute  
6 appropriate section numbers for the letters used in designating  
7 the new sections in this Act.

8 SECTION 6. This Act does not affect rights and duties that  
9 matured, penalties that were incurred, and proceedings that were  
10 begun before its effective date.

11 SECTION 7. If any provision of this Act, or the  
12 application thereof to any person or circumstance is held  
13 invalid, the invalidity does not affect other provisions or  
14 applications of the Act, which can be given effect without the  
15 invalid provision or application, and to this end the provisions  
16 of this Act are severable.

17 SECTION 8. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 9. This Act shall take effect on July 1, 2011.

20



**Report Title:**

Hawaii Penal Code; Labor Trafficking

**Description:**

Establishes class A and B felony labor trafficking offenses, a nonpayment of wages offense, and an unlawful conduct with respect to documents offense. Establishes provisions related to prosecution of the offenses. (Proposed SD1)

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