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LRB094 09423 LCB 42378 a

1 AMENDMENT TO HOUSE BILL 1299

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1299 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Predator Accountability Act.

6 Section 5. Findings. The General Assembly finds:

7 (1) The United Nations Convention of December 2, 1949  
8 proclaimed that prostitution and sex trafficking are  
9 "incompatible with the dignity and worth of the human  
10 person and endanger the welfare of the individual, the  
11 family and the community." Sex trade activities and sex  
12 trafficking are supported by inequality and oppression  
13 based on gender, race, socioeconomic status, sexual  
14 orientation, and age. The sex trade and sex trafficking  
15 disproportionately affect women and children, particularly  
16 women of color. Men are also trafficked and exploited in  
17 the sex trade.

18 (2) Regardless of the specific pathway the women took  
19 to trading sex, their initial experiences could not have  
20 occurred in the absence of an environment that was  
21 supportive of their sex trade activities, as well as  
22 partners who were willing to pay for sex. Research and  
23 evidence suggests that the sex trade is inherently  
24 coercive, abusive, and exploitative. Individuals,

1 organizations, and entities often recruit and maintain  
2 persons, largely women and girls, in the sex trade through  
3 predatory behaviors including coercion, violence, abuse,  
4 and exploitation.

5 (3) These practices often cause severe trauma and  
6 long-term physical, emotional, and psychological damage.  
7 Often, individuals enter sex trade-related activities  
8 prior to age 18, are homeless or runaways, victims of  
9 childhood sexual, physical, and emotional abuse, or have  
10 mental health or substance abuse issues. Many adult persons  
11 in the sex trade are victimized by many forms of violence  
12 and abuse while in the sex trade. This violence is often  
13 perpetrated to maintain their participation in the sex  
14 trade.

15 (4) Many persons, organizations, and entities that  
16 subject individuals to or maintain them in the sex trade  
17 are not held accountable by the criminal justice system. In  
18 some parts of the State, less than 1% of all prostitution  
19 related arrests are for pimps or panderers.

20 (5) This Act allows persons who have been or are  
21 subjected to the sex trade to seek civil damages and  
22 remedies from individuals and entities that recruited,  
23 profited from, or maintained them in the sex trade.

24 Section 10. Definitions. As used in this Act:

25 "Sex trade" means any type of sexual activity in exchange  
26 for any type of consideration, including a single incident of  
27 activity. Forms of "sex trade" include, but are not limited to,  
28 sex trafficking, street-level sex trade activity, stripping,  
29 massage parlors, pornography, and escort services and involve  
30 adults and youth of all gender and sexual orientations, whether  
31 or not physical contact is involved.

32 Section 15. Cause of action.

1 (a) An individual subjected to the sex trade has a cause of  
2 action against a person or entity who:

3 (1) recruited, hired, offered, agreed, or attempted to  
4 hire the individual to engage in the sex trade;

5 (2) procured, enticed, led away, pimped, trafficked,  
6 financed, or profited from his or her sex trade activity;

7 (3) collected or received any of the individual's  
8 earnings derived from the sex trade; or

9 (4) advertised or published advertisements for  
10 purposes of recruitment into illegal sex trade activity.

11 (b) A separate cause of action may be brought under this  
12 Act against any individual who has engaged in retaliation  
13 against any plaintiff in a proceeding under this Act, any  
14 member of a plaintiff's family, any person who in good faith  
15 has opposed anything that he or she reasonably believed to be a  
16 violation of this Act, or any person who has filed a complaint,  
17 testified, assisted, or participated in a proceeding pursuant  
18 to this Act.

19 Section 20. Relief. A prevailing plaintiff shall be  
20 entitled to all relief that would make the plaintiff whole.  
21 This includes, but is not limited to:

22 (1) declaratory relief;

23 (2) injunctive relief;

24 (3) recovery of costs and attorney fees, including but  
25 not limited to costs for expert testimony and witness fees;

26 (4) profits from sex trade activity;

27 (5) compensatory damages, such as (i) economic loss,  
28 including damage, destruction, or loss of use of personal  
29 property and loss of past or future income or earning  
30 capacity, and (ii) damages for death, personal injury,  
31 disease, and mental and emotional harm, including medical,  
32 rehabilitation, and burial expenses, and pain and  
33 suffering, including physical impairment; and

1 (6) punitive damages.

2 Section 25. Non-defenses. It is not a defense to an action  
3 under this Act that:

4 (1) the plaintiff consented to engage in acts of the  
5 sex trade;

6 (2) the plaintiff and defendant had a marital or  
7 consenting sexual relationship;

8 (3) the defendant is related to plaintiff by blood or  
9 marriage, or has lived with the defendant in any formal or  
10 informal household arrangement;

11 (4) the plaintiff was paid or otherwise compensated for  
12 sex trade activity;

13 (5) the plaintiff engaged in sex trade activity prior  
14 to any involvement with the defendant;

15 (6) the defendant had not engaged in prior sex trade  
16 activity with the plaintiff;

17 (7) the plaintiff owed a debt to the defendant,  
18 monetary or otherwise;

19 (8) the defendant signed a legal or illegal contract  
20 with the plaintiff;

21 (9) the plaintiff apparently initiated involvement  
22 with the defendant;

23 (10) the plaintiff made no attempt to escape, flee, or  
24 otherwise terminate contact with the defendant;

25 (11) the plaintiff continued to engage in sex trade  
26 activity after terminating contact with defendant;

27 (12) as a condition of employment, the defendant  
28 required the plaintiff to agree not to engage in the sex  
29 trade; or

30 (13) the defendant's place of business was posted with  
31 signs prohibiting illegal sex trade activity.

32 Section 30. Evidence. In the course of litigation under

1 this Act, any transaction about which a plaintiff testifies or  
2 produces evidence does not subject the plaintiff to criminal  
3 prosecution or any penalty or forfeiture. Any testimony or  
4 evidence, documentary or otherwise, or information directly or  
5 indirectly derived from that testimony or evidence that is  
6 given or produced by a plaintiff or a witness for a plaintiff  
7 may not be used against that person in any other investigation  
8 or proceeding, other than a criminal investigation or  
9 proceeding for perjury committed while giving the testimony or  
10 producing the evidence.

11 Evidence of any prior convictions, particularly for sex  
12 trade or sex trade-related offenses, shall be inadmissible in a  
13 proceeding brought under this Act for purposes of attacking the  
14 plaintiff's credibility. If the court admits evidence of prior  
15 convictions for purposes permitted under the rules of evidence  
16 with respect to motive, opportunity, intent, preparation,  
17 plan, knowledge, identity, or absence of mistake or accident,  
18 the fact finder may consider the evidence solely for those  
19 purposes and shall disregard details offered to prove any fact  
20 that is not relevant.

21 Section 35. Statute of limitations.

22 (a) If the person entitled to bring the action was a minor  
23 at the time the cause of action accrued, the action must be  
24 commenced within 10 years after the person reaches the age of  
25 18. An action for damages under this Act must be commenced  
26 within 10 years of the time the plaintiff knew and fully  
27 understood:

28 (1) that the plaintiff had been injured; and

29 (2) that the injury was caused by conduct of the  
30 defendant described in this Act.

31 (b) The court shall toll the limitations period upon a  
32 showing that the plaintiff was or is unable, due to sex  
33 trade-related injury, to commence the action within the

1 limitations period. The injury may be psychological and need  
2 not be traceable to any action by the defendant. A plaintiff  
3 may not be compelled to personally appear to attest to these  
4 facts. Affidavits from the plaintiff and the plaintiff's doctor  
5 stating the required facts shall be sufficient to constitute a  
6 showing as required by this subsection (b).

7 (c) The court shall toll the limitations period upon a  
8 showing that despite reasonable efforts, the plaintiff was  
9 unable to ascertain the identity, true name, or location of the  
10 defendant during the limitations period. In determining  
11 whether the plaintiff's efforts were reasonable, the court  
12 shall consider the totality of the plaintiff's circumstances  
13 during the limitations period, including the plaintiff's  
14 emotional condition, financial resources, freedom of movement  
15 and communication, and reasonable fear of the defendant for  
16 self or others.

17 (d) The court shall toll the limitations period upon a  
18 showing that the defendant in any way inhibited the plaintiff's  
19 understanding of the right to pursue the cause of action or the  
20 plaintiff's ability to pursue the cause of action. Behavior  
21 constituting inhibition includes, but is not limited to:

22 (1) minimizing by words or deeds the harm inflicted  
23 upon plaintiff;

24 (2) isolating plaintiff from access to legal  
25 representation;

26 (3) threatening plaintiff with retaliation for  
27 pursuing the claim; and

28 (4) misrepresenting the injury as the plaintiff's  
29 fault rather than the fault of the abuser.

30 (e) There is no limitation of time on actions for  
31 declaratory or injunctive relief under this Act.

32 Section 40. Other remedies preserved. The provisions of  
33 this Act do not affect the right of any person to bring an

1 action or use any remedy available under other law, including  
2 common law, to recover damages arising out of the use of the  
3 individual in the sex trade nor does this Act limit or restrict  
4 the liability of any person under other law. This Act does not  
5 reflect a determination of a policy regarding the applicability  
6 of strict liability to activities relating to the sex trade.

7 Section 45. Double recovery prohibited. A person who  
8 recovers damages under this Act may not recover the same costs  
9 or damages under any other Act. A person who recovers damages  
10 under any other Act may not recover for the same costs or  
11 damages under this Act.

12 Section 50. Avoidance of liability. No person may avoid  
13 liability under this Act by means of any conveyance of any  
14 right, title, or interest in real property, or by any  
15 indemnification, hold harmless agreement, or similar agreement  
16 that purports to show consent of the plaintiff.

17 Section 55. Severability. If any provision of this Act or  
18 its application to any person or circumstance is held invalid,  
19 the invalidity of that provision or its application does not  
20 affect other provisions or applications of this Act that can be  
21 given effect without the invalid provision or application.

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law."