

JAN 21 2011

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# A BILL FOR AN ACT

RELATING TO CRIME.

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

17          (a) Extortion as defined in section 707-764;

18          (b) Kidnapping as defined in section 707-720;



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



1 (i) Using any scheme, plan, or pattern intended to cause  
2 the person to believe that if the person did not  
3 perform the labor or services, then the person or a  
4 friend or a member of the person's family would suffer  
5 serious harm, serious financial loss, or physical  
6 restraint; or

7 (j) Using or threatening to use any form of domination,  
8 restraint, or control over the person which, given the  
9 totality of the circumstances, would have the  
10 reasonably foreseeable effect of causing the person to  
11 engage in or to remain engaging in the labor or  
12 services.

13 (2) Labor trafficking in the first degree is a class A  
14 felony.

15 **§707-C Labor trafficking in the second degree.** (1) A  
16 person commits the offense of labor trafficking in the second  
17 degree if the person knowingly:

18 (a) Either acting as an individual or using a licensed  
19 business or business enterprise, aids another in a  
20 venture knowing that the other person in that venture  
21 is committing the offense of labor trafficking in the  
22 first degree; or



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

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

14 (3) Upon conviction of a defendant under subsection (1),  
15 the court shall also order that any and all business licenses  
16 issued by the State be revoked for the business or enterprise  
17 that the defendant used to aid in the offense of labor  
18 trafficking in the second degree; provided that the court, in  
19 its discretion, may reinstate the business license upon petition  
20 to the court by any remaining owner or partner of the business  
21 or enterprise who was not convicted of an offense under this  
22 section.



1       **§707-D Additional sentencing considerations; victims held**  
2 **in servitude.** In addition to the factors set forth in sections  
3 706-606 and 706-621, when determining the particular sentence to  
4 be imposed on a defendant convicted under section 707-B or  
5 707-C, the court shall consider:

- 6       (a) The time in which the victim was held in servitude;  
7             and  
8       (b) The number of victims.

9       **§707-E Extended terms of imprisonment; labor trafficking**  
10 **offenses.** If a person is found guilty of a violation under  
11 section 707-B or 707-C and the victim suffered bodily injury,  
12 the person may be sentenced to an extended indeterminate term of  
13 imprisonment. Subject to the procedures set forth in section  
14 706-664, the court may impose, in addition to the indeterminate  
15 term of imprisonment provided for the grade of offense, an  
16 additional indeterminate term of imprisonment as follows:

- 17       (a) Bodily injury - an additional two years of  
18             imprisonment;  
19       (b) Serious bodily injury - an additional five years of  
20             imprisonment;  
21       (c) Permanent or life-threatening bodily injury - an  
22             additional fifteen years of imprisonment; or



1 (d) If death results, the defendant shall be sentenced in  
2 accordance with the homicide statute relevant for the  
3 level of criminal intent.

4 When ordering an extended term sentence, the court shall impose  
5 the maximum length of imprisonment. The minimum length of  
6 imprisonment for an extended term sentence under paragraphs (a),  
7 (b), (c), or (d) shall be determined by the Hawaii paroling  
8 authority in accordance with section 706-669.

9 **§707-F Restitution for victims of labor trafficking. (1)**

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

- 14 (a) The total gross income or value to the defendant of  
15 the victim's labor or services; or  
16 (b) The value of the victim's labor or services, as  
17 guaranteed under the minimum wage provisions of  
18 chapter 387 or the Fair Labor Standards Act of 1938,  
19 P.L. 75-718, 29 U.S.C. 201 - 219, inclusive, whichever  
20 is greater.



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

4           (3) For purposes of this section, "victim" means the  
5 person against whom an offense specified in section 707-B or  
6 707-C has been committed.

7           **§707-G Nonpayment of wages.** (1) A person commits the  
8 offense of nonpayment of wages if the person, in the capacity as  
9 an employer of an employee, wilfully or with intent to defraud  
10 fails or refuses to pay wages to the employee. In addition to  
11 any other penalty, a person convicted of nonpayment of wages  
12 shall be fined not less than \$2,000 nor more than \$10,000 for  
13 each offense.

14           (2) Nonpayment of wages is:

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

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

21           (3) A person commits a separate offense under this section  
22 for each pay period during which the employee earned wages that



1 the person failed or refused to pay the employee. If no set pay  
2 periods were agreed upon between the person and the employee at  
3 the time the employee commenced the work, then each "pay period"  
4 shall be deemed to be bi-weekly.

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

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

10 (b) The value of the employee's labor or services, as  
11 guaranteed under the minimum wage provisions of  
12 chapter 387 or the Fair Labor Standards Act of 1938,  
13 P.L. 75-718, 29 U.S.C. 201 - 219, inclusive, whichever  
14 is greater.

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

18 (6) For purposes of this section:

19 "Employee" means any person working for another for hire,  
20 including but not limited to an individual employed in domestic  
21 service or at a family or person's home or any individual





1 employed by the individual's parent or spouse, or independent  
2 contractors.

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 State or any political  
8 subdivision thereof or the United States.

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

12 **§707-H Unlawful conduct with respect to documents.** (1) A  
13 person commits the unlawful conduct with respect to documents if  
14 the person knowingly destroys, conceals, removes, confiscates,  
15 or possesses any actual or purported government identification  
16 document of another person:

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

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



1 person is or has been the victim of an offense under  
2 section 707-B or 707-C.

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

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

7 "§712A-4 Covered offenses. Offenses for which property is  
8 subject to forfeiture under this chapter are:

- 9 (a) All offenses which specifically authorize forfeiture;
- 10 (b) Murder, kidnapping, labor trafficking, gambling,  
11 criminal property damage, robbery, bribery, extortion,  
12 theft, unauthorized entry into motor vehicle,  
13 burglary, money laundering, trademark counterfeiting,  
14 insurance fraud, promoting a dangerous, harmful, or  
15 detrimental drug, commercial promotion of marijuana,  
16 unlawful methamphetamine trafficking, manufacturing of  
17 a controlled substance with a child present, promoting  
18 child abuse, or electronic enticement of a child which  
19 is chargeable as a felony offense under state law;
- 20 (c) The manufacture, sale, or distribution of a controlled  
21 substance in violation of chapter 329, promoting  
22 detrimental drugs or intoxicating compounds, promoting



1           pornography, promoting pornography for minors, or  
2           promoting prostitution, which is chargeable as a  
3           felony or misdemeanor offense, but not as a petty  
4           misdemeanor, under state law; and

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

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

10           "**§803-44 Application for court order to intercept wire,**  
11           **oral, or electronic communications.** The attorney general of  
12           this State, or a designated deputy attorney general in the  
13           attorney general's absence or incapacity, or the prosecuting  
14           attorney of each county, or a designated deputy prosecuting  
15           attorney in the prosecuting attorney's absence or incapacity,  
16           may make application to a designated judge or any other circuit  
17           court judge or district court judge, if a circuit court judge  
18           has not been designated by the chief justice of the Hawaii  
19           supreme court, or is otherwise unavailable, in the county where  
20           the interception is to take place, for an order authorizing or  
21           approving the interception of wire, oral, or electronic  
22           communications, and such court may grant in conformity with



1 section 803-46 an order authorizing, or approving the  
2 interception of wire, oral, or electronic communications by  
3 investigative or law enforcement officers having responsibility  
4 for the investigation of the offense as to which the application  
5 is made, if the interception might provide or has provided  
6 evidence of:

7 (1) Murder;

8 (2) Kidnapping;

9 (3) Labor trafficking in the first degree;

10 (4) Labor trafficking in the second degree;

11 ~~[(3)]~~ (5) Felony criminal property damage involving the  
12 danger of bodily injury as defined in section 707-700;

13 ~~[(4)]~~ (6) Distribution of dangerous, harmful, or  
14 detrimental drugs; or

15 ~~[(5)]~~ (7) Conspiracy to commit one or more of the above; or  
16 involving

17 ~~[(6)]~~ (8) Organized crime and any of the following felony  
18 offenses:

19 (A) Extortion;

20 (B) Bribery of a juror, of a witness, or of a police  
21 officer;

22 (C) Receiving stolen property; ~~[and]~~



- 1 (D) Gambling; and
- 2 (E) Money laundering."

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

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

13 "Racketeering activity" means any act or threat  
14 involving[7] but not limited to murder, kidnapping, gambling,  
15 criminal property damage, robbery, bribery, extortion, labor  
16 trafficking, theft, or prostitution, or any dealing in narcotic  
17 or other dangerous drugs which is chargeable as a crime under  
18 state law and punishable by imprisonment for more than one  
19 year."

20 SECTION 5. In codifying the new sections added by  
21 section 1 of this Act, the revisor of statutes shall substitute



# S.B. NO. 960

1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 6. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

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

12 SECTION 8. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 9. This Act shall take effect upon its approval.  
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INTRODUCED BY: Anzanne Chun Oakland  
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**Report Title:**

Labor Trafficking; Nonpayment of Wages; Crimes

**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. Effective upon approval.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

