



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB0421

Introduced 2/16/2005, by Sen. Iris Y. Martinez - Martin A. Sandoval

SYNOPSIS AS INTRODUCED:

New Act

Creates the Predator Accountability Act. Creates a cause of action against a person who: (i) coerced an individual into prostitution; (ii) coerced an individual to remain in prostitution; (iii) used coercion to collect or receive any of an individual's earnings derived from prostitution; or (iv) advertised or published advertisements for purposes of recruitment into prostitution. Provides for damages for violation of the Act. Exempts the provisions of joint and several liability to actions brought under the Act. Lists non-defenses to an action brought under the Act. Provides for award of costs to the prevailing party.

LRB094 08785 LCB 39001 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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

6 Section 5. Definitions. As used in this Act:

7 "Prostitution" means any forms of prostitution including,
8 but not limited to, street level, stripping, massage parlors,
9 pornography, and escort services and involve adults and youth
10 of all gender and sexual orientations. "Prostitution" includes
11 attempts to prostitute an individual or to engage in
12 "no-touching" activities.

13 "Coerce" means to use or threaten to use any form of
14 domination, restraint, or inducement for the purpose or with
15 the reasonably foreseeable effect of causing an individual to
16 engage in or remain in prostitution or to relinquish earnings
17 derived from prostitution. "Coercion" may include, but is not
18 limited to, the following:

19 (1) physical force or actual or implied threats of
20 physical force or restraint;

21 (2) physical or mental torture;

22 (3) implicitly or explicitly leading an individual to
23 believe that the individual will be protected from violence
24 or arrest;

25 (4) kidnapping;

26 (5) exploiting age difference or individual's status
27 of minor;

28 (6) using lies and false promises to deceive;

29 (7) causing an individual to believe that failure to
30 perform an act would result in serious harm to or physical
31 restraint against that individual or any person;

32 (8) defining the terms of an individual's employment or

1 working conditions in a manner that can foreseeably lead to
2 the individual's use in prostitution;

3 (9) blackmail;

4 (10) extortion or claims of indebtedness;

5 (11) restraining speech or communication with others,
6 such as exploiting a language difference or interfering
7 with the use of mail, telephone, email, fax, or other forms
8 of communication;

9 (12) controlling or interfering with financial
10 transactions;

11 (13) isolating an individual from others;

12 (14) introducing or utilizing drugs or alcohol to
13 control an individual and exploiting an individual's
14 addiction to drugs and alcohol;

15 (15) exploiting a condition of developmental
16 disability, cognitive limitation, or affective and other
17 mental health disorder;

18 (16) taking advantage of lack of intervention by child
19 protection;

20 (17) exploiting victimization by previous sexual abuse
21 or battering;

22 (18) exploiting pornographic performance;

23 (19) exploiting an individual's crisis situation, such
24 as runaway status;

25 (20) interfering with opportunities for education or
26 skills training;

27 (21) destroying property;

28 (22) restraining movement;

29 (23) exploiting HIV status, particularly where the
30 defendant's previous coercion led to the HIV;

31 (24) exploiting the need for food, shelter, safety, or
32 affection or intimate marital relationship;

33 (25) taking advantage of parental, custodial, or other
34 familial authority over an individual;

35 (26) taking advantage of an individual's love and need
36 for bonding and affection from a parental, custodial, or

1 other familial figure;

2 (27) exploiting immigrant status;

3 (28) exploiting an individual's family members' or
4 dependents' economic needs;

5 (29) a threat of an act described in items (1) through
6 (28) of this definition causing a realistic apprehension
7 that the originator of the threat will commit the act;

8 (30) threat of legal complaint or report of
9 delinquency;

10 (31) threat to interfere with parental rights or
11 responsibilities, whether by judicial or administrative
12 action or otherwise;

13 (32) promise of a legal benefit, such as posting bail,
14 procuring an attorney, protecting from arrest, or
15 promising unionization;

16 (33) promise of financial rewards;

17 (34) promise of marriage;

18 (35) threatening to reveal information about perceived
19 or actual sexual orientation ("outing");

20 (36) threatening to harm an individual's dependents or
21 family members; or

22 (37) hiring an adult or minor for the purposes of
23 prostitution knowing that he or she has been coerced by
24 another.

25 Section 10. Cause of action. An individual has a cause of
26 action against a person or entity who:

27 (1) coerced an individual into prostitution;

28 (2) coerced an individual to remain in prostitution;

29 (3) used coercion to collect or receive any of an
30 individual's earnings derived from prostitution;

31 (4) hired, offered, or agreed to hire an individual to
32 engage in prostitution, knowing or having reason to believe
33 that the individual was coerced into or coerced to remain
34 in prostitution; or

35 (5) advertised or published advertisements for

1 purposes of recruitment into prostitution.

2 (b) An individual has a cause of action against any person,
3 entity, or organization for any act of solicitation, hiring,
4 promotion of, prostitution, or receiving money from a minor's
5 prostitution whether or not the coercive factors are present.

6 Section 15. Relief.

7 (a) A person against whom a cause of action may be
8 maintained under Section 10 is liable for damages that resulted
9 from the plaintiff being used in prostitution or to which the
10 plaintiff's use in prostitution significantly contributed, as
11 well as all relief that would make the plaintiff whole.

12 (b) Damages may include, without limitation, a declaratory
13 judgment, an injunction, recovery of costs for expert
14 testimony, and monetary relief.

15 (c) Monetary relief may include:

16 (1) punitive and compensatory damages;

17 (2) economic loss, including damage, destruction, or
18 loss of use of personal property; loss of past or future
19 income or earning capacity; and income, profits, or money
20 owed to the plaintiff from legal or illegal contracts with
21 the person, unless an illegal contract is current,
22 nonexecutory, and the plaintiff is no longer a prostitute;

23 (3) damages for death, personal injury, physical
24 impairment, disease, and burial expenses; and

25 (4) pain and suffering, including mental and emotional
26 harm and any medical or rehabilitation expenses.

27 Section 20. Joint and several liability. The provisions of
28 joint and several liability do not apply to actions brought
29 under this Act.

30 Section 25. Non-defenses. It is not a defense to an action
31 brought under this Act that:

32 (1) the plaintiff consented to engage in acts of
33 prostitution;

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

3 (3) the defendant is related to plaintiff by blood or
4 marriage or has lived in any formal or informal household
5 arrangement;

6 (4) the plaintiff was paid or otherwise compensated for
7 the acts of prostitution;

8 (5) the plaintiff engaged in acts of prostitution prior
9 to any involvement with the defendant;

10 (6) the defendant had not engaged in prior acts of
11 prostitution with the plaintiff;

12 (7) the plaintiff was owed a debt, monetary or
13 otherwise;

14 (8) the defendant signed a legal or illegal contract
15 with the plaintiff;

16 (9) the plaintiff apparently initiated involvement
17 with the defendant;

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

20 (11) as a condition of employment, the defendant
21 required the plaintiff to agree not to engage in
22 prostitution;

23 (12) the defendant's place of business was posted with
24 signs prohibiting prostitution or prostitution related
25 activities; or

26 (13) one or more acts of coercion as defined in this
27 Act were committed, at least in part, to induce someone
28 into prostitution whether or not those acts have resulted
29 in criminal charges, prosecution, or conviction.

30 Section 30. Evidence. In the course of litigation under
31 this Act, any transaction about which a plaintiff testifies or
32 produces evidence does not subject the plaintiff to criminal
33 prosecution or any penalty or forfeiture. Any testimony or
34 evidence, documentary or otherwise, or information directly or
35 indirectly derived from that testimony or evidence that is

1 given or produced by a plaintiff or a witness for a plaintiff
2 may not be used against that person in any other investigation
3 or proceeding other than a criminal investigation or proceeding
4 for perjury committed while giving the testimony or producing
5 the evidence.

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

16 Section 35. Statute of limitations.

17 (a) An action for damages must be commenced within 10 years
18 of the age of majority, if coercion of the plaintiff occurred
19 as a minor. If coercion of an adult occurred, then an action
20 for damages must be commenced within 10 years after the last
21 act of coercion.

22 (b) An action for damages under this Act must be commenced
23 within 10 years of the time the plaintiff knew and full
24 understood that the plaintiff had been injured and that the
25 injury was caused by the conduct of the defendant as described
26 in Section 10.

27 (c) The court shall grant an extension of the limitations
28 period upon a showing that the plaintiff was or is unable, due
29 to a prostitution-related injury, to commence the action within
30 the limitations period. The injury may be psychological and
31 need not be traceable to any action by the defendant. A
32 plaintiff may not be compelled to personally appear to attest
33 to these facts. Affidavits from the plaintiff and the
34 plaintiff's doctor stating the required facts are sufficient to
35 constitute a showing as required by this Section.

1 (d) The court shall grant an extension of the limitations
2 period upon a showing that despite the reasonable efforts, the
3 plaintiff was unable to ascertain the identity, true name, or
4 location of the of the defendant during the limitations period.
5 In determining whether the plaintiffs efforts were reasonable,
6 the court shall consider the totality of the plaintiff's
7 circumstances during the limitations period, including the
8 plaintiff's emotional condition, financial resources, freedom
9 of movement and communication, and reasonable fear of the
10 defendant for himself or herself or for others.

11 (e) The court shall grant an extension of the limitations
12 period upon showing that the defendant in any way inhibited the
13 plaintiff's understanding of the right to pursue the cause of
14 action or the plaintiff's ability to pursue the cause of
15 action. Behavior constituting inhibition includes, but is not
16 limited to, the following:

17 (1) minimizing by words or deeds the harm inflicted
18 upon the plaintiff;

19 (2) isolating the plaintiff from access to legal
20 representation;

21 (3) threatening the plaintiff with retaliation for
22 pursuing the claim; or

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

25 (f) There is no limitation of time on actions for
26 declaratory or injunctive relief under this Act.

27 Section 40. Remedies preserved. This Act does not affect
28 the right of any person to bring an action or use any remedy
29 available under other law, including common law, to recover
30 damages arising out of the use of the individual in
31 prostitution or the coercion incident to the individual being
32 used in prostitution nor does this Act limit or restrict the
33 liability of any person under other law. This Act does not
34 reflect a determination of a policy regarding the applicability
35 of strict liability to activities relating to prostitution.

1 Section 45. Double recovery prohibited. Any person who
2 recovers damages under this Act may not recover the same costs
3 or damages under any other Act. A person who recovers damages
4 under any other Act may not recover for the same costs or
5 damages under this Act.

6 Section 50. Award of costs. Upon the motion of a party
7 prevailing in an action under this Act, the court may award
8 costs, disbursements, reasonable attorneys' fees, and expert
9 testimony and witness fees to that party.

10 Section 55. Avoidance of liability. No person may avoid
11 liability under this Act by means of any conveyance of any
12 right, title, or interest in real property, or by any
13 indemnification, hold harmless agreement, or similar agreement
14 that purports to show consent of the plaintiff.