

House Bill 244

By: Representatives Efration of the 104<sup>th</sup>, Welch of the 110<sup>th</sup>, Brockway of the 102<sup>nd</sup>, Oliver of the 82<sup>nd</sup>, Cooper of the 43<sup>rd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 3 of Title 9, Chapter 21 of Title 15, Chapter 6 of Title 16, Code Section  
2 42-1-12, and Article 1 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated,  
3 relating to limitations of actions, payment and disposition of fines and forfeitures, sexual  
4 offenses, the State Sexual Offender Registry, and children and youth services, respectively,  
5 so as to increase protection and resources for children who have been sexually exploited; to  
6 extend the statute of limitations for actions for childhood sexual abuse; to change provisions  
7 relating to the statute of limitations for injuries to the person; to change provisions relating  
8 to tolling of limitations for a minor's cause of action; to change provisions relating to the  
9 tolling of limitations for tort actions while criminal prosecution is pending; to create the Safe  
10 Harbor for Sexually Exploited Children Fund and the Safe Harbor for Sexually Exploited  
11 Children Fund Commission; to provide for definitions; to provide for appointment of  
12 members of the commission and personnel; to provide for duties of the commission and  
13 allow for expenses; to provide for recommendations of changes in state programs, laws, and  
14 policies; to provide for acceptance of federal funds and individual donations; to provide for  
15 fines and penalties; to provide for collection of fines and disposition of moneys collected; to  
16 impose a state regulatory fee on adult entertainment establishments; to provide for the  
17 powers, duties, and authority of the Department of Revenue and the commissioner of  
18 revenue; to provide for a duty to collect; to expand forfeiture proceedings involving pimping  
19 under certain circumstances to include keeping a place of prostitution, pimping, pandering,  
20 and pandering by compulsion; to require registration on the State Sexual Offender Registry  
21 when an individual is convicted of trafficking a person for sexual servitude; to require the  
22 Department of Human Services to implement a plan to provide services to sexually exploited  
23 children; to provide for a short title; to provide for legislative findings and a purpose  
24 statement; to provide for related matters; to provide for an effective date and contingent  
25 effective date; to repeal conflicting laws; and for other purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**PART I****SECTION 1-1.**

This Act shall be known and may be cited as the "Safe Harbor/Rachel's Law Act."

**SECTION 1-2.**

(a) The General Assembly finds that arresting, prosecuting, and incarcerating victimized children serves to retraumatize children and increases their feelings of low self-esteem, making the process of recovery more difficult. The General Assembly acknowledges that both federal and state laws recognize that sexually exploited children are the victims of crime and should be treated as victims. The General Assembly finds that sexually exploited children deserve the protection of child welfare services, including family support, crisis intervention, counseling, and emergency housing services. The General Assembly finds that it is necessary and appropriate to adopt uniform and reasonable fees and regulations to help address the deleterious secondary effects, including but not limited to, prostitution and sexual exploitation of children, associated with adult entertainment establishments that provide to their patrons performances and interaction involving various forms of nudity.

(b) The purpose of this Act is to protect a child from further victimization after he or she is discovered to be a sexually exploited child by ensuring that a child protective response is in place in this state. The purpose and intended effect of this Act in imposing fees and regulations on adult entertainment establishments is not to impose a restriction on the content or reasonable access to any materials or performances protected by the First Amendment of the United States Constitution or Article I, Section I, Paragraph V of the Constitution of this state.

**PART II****SECTION 2-1.**

Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to limitations of actions, is amended by revising Code Section 9-3-33, relating to limitations for actions for injuries to the person, as follows:

"9-3-33.

Except as otherwise provided in this article, actions ~~Actions~~ for injuries to the person shall be brought within two years after the right of action accrues, except for injuries to the reputation, which shall be brought within one year after the right of action accrues, and except for actions for injuries to the person involving loss of consortium, which shall be brought within four years after the right of action accrues."

## SECTION 2-2.

Said chapter is further amended by revising Code Section 9-3-33.1, relating to limitations for actions for childhood sexual abuse, as follows:

"9-3-33.1.

(a)(1) As used in this ~~Code section~~ subsection, the term 'childhood sexual abuse' means any act committed by the defendant against the plaintiff which ~~act~~ occurred when the plaintiff was under ~~the age of 18 years of age~~ and which act would have been proscribed by Code Section 16-6-1, relating to rape; Code Section 16-6-2, relating to sodomy and aggravated sodomy; Code Section 16-6-3, relating to statutory rape; Code Section 16-6-4, relating to child molestation and aggravated child molestation; Code Section 16-6-5, relating to enticing a child for indecent purposes; Code Section 16-6-12, relating to pandering; Code Section 16-6-14, relating to pandering by compulsion; Code Section 16-6-15, relating to solicitation of sodomy; Code Section 16-6-22, relating to incest; Code Section 16-6-22.1, relating to sexual battery; or Code Section 16-6-22.2, relating to aggravated sexual battery, or any prior laws of this state of similar effect which were in effect at the time the act was committed be in violation of:

(A) Rape, as prohibited in Code Section 16-6-1;

(B) Sodomy or aggravated sodomy, as prohibited in Code Section 16-6-2;

(C) Statutory rape, as prohibited in Code Section 16-6-3;

(D) Child molestation or aggravated child molestation, as prohibited in Code Section 16-6-4;

(E) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5;

(F) Pandering, as prohibited in Code Section 16-6-12;

(G) Pandering by compulsion, as prohibited in Code Section 16-6-14;

(H) Solicitation of sodomy, as prohibited in Code Section 16-6-15;

(I) Incest, as prohibited in Code Section 16-6-22;

(J) Sexual battery, as prohibited in Code Section 16-6-22.1; or

(K) Aggravated sexual battery, as prohibited in Code Section 16-6-22.2.

~~(b)(2)~~ Notwithstanding Code Section 9-3-33, any ~~Any~~ civil action for recovery of damages suffered as a result of childhood sexual abuse committed before July 1, 2015, shall be commenced ~~within five years of~~ on or before the date the plaintiff attains the age of ~~majority~~ 23.

~~(b)(1)~~ As used in this subsection, the term 'childhood sexual abuse' means any act committed by the defendant against the plaintiff which occurred when the plaintiff was under 18 years of age and which would be in violation of:

(A) Trafficking a person for sexual servitude, as prohibited in Code Section 16-5-46;

(B) Rape, as prohibited in Code Section 16-6-1;

(C) Statutory rape, as prohibited in Code Section 16-6-3, if the defendant was 21 years of age or older at the time of the act;

(D) Aggravated sodomy, as prohibited in Code Section 16-6-2;

(E) Child molestation or aggravated child molestation, as prohibited in Code Section 16-6-4, unless the violation would be subject to punishment as provided in paragraph (2) of subsection (b) of Code Section 16-6-4 or paragraph (2) of subsection (d) of Code Section 16-6-4;

(F) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5, unless the violation would be subject to punishment as provided in subsection (c) of Code Section 16-6-5;

(G) Incest, as prohibited in Code Section 16-6-22;

(H) Aggravated sexual battery, as prohibited in Code Section 16-6-22.2; or

(I) Part 2 of Article 3 of Chapter 12 of Title 16.

(2) Notwithstanding Code Section 9-3-33, any civil action for recovery of damages suffered as a result of childhood sexual abuse committed on or after July 1, 2015, shall be commenced on or before the date the plaintiff attains the age of 25."

### SECTION 2-3.

Said chapter is further amended by revising Code Section 9-3-90, relating to persons under disability or imprisoned when cause of action accrues, as follows:

"9-3-90.

(a) ~~Individuals~~ Minors and persons who are legally incompetent because of mental retardation or mental illness, who are such when the cause of action accrues, shall be entitled to the same time after their disability is removed to bring an action as is prescribed for other persons.

(b) Except as otherwise provided in Code Section 9-3-33.1, individuals who are less than 18 years of age when a cause of action accrues shall be entitled to the same time after he or she reaches the age of 18 years to bring an action as is prescribed for other persons.

~~(b)(c)~~ No action accruing to a person an individual imprisoned at the time of its accrual which, prior:

(1) Prior to July 1, 1984, has been barred by the provisions of this chapter relating to limitations of actions shall be revived by this chapter, as amended. No action accruing to a person imprisoned at the time of its accrual which would; or

(2) Would be barred before July 1, 1984, by the provisions of this chapter, as amended, but which would not be so barred by the provisions of this chapter in force immediately prior to July 1, 1984, shall be barred until July 1, 1985."

**SECTION 2-4.**

Said chapter is further amended by revising Code Section 9-3-99, relating to tolling of limitations for tort actions while criminal prosecution is pending, as follows:

"9-3-99.

The running of the period of limitations with respect to any cause of action in tort that may be brought by the victim of an alleged crime which arises out of the facts and circumstances relating to the commission of such alleged crime committed in this state shall be tolled from the date of the commission of the alleged crime or the act giving rise to such action in tort until the prosecution of such crime or act has become final or otherwise terminated, provided that such time does not exceed six years, except as otherwise provided in Code Section 9-3-33.1."

**PART III****SECTION 3-1.**

Chapter 21 of Title 15 of the Official Code of Georgia Annotated, relating to payment and disposition of fines and forfeitures, is amended by adding a new article to read as follows:

**"ARTICLE 11**

15-21-200.

This article is enacted pursuant to Article III, Section IX, Paragraph VI(o) of the Constitution, which provision authorizes additional penalty assessments for violations relating to certain sexual crimes, authorizes fees on certain businesses, and provides that the proceeds derived therefrom may be used for the purpose of meeting the costs of care and rehabilitative and social services for certain citizens of this state who have been sexually exploited.

15-21-201.

As used in this article, the term:

(1) 'Adult entertainment establishment' means any place of business or commercial establishment wherein:

(A) The entertainment or activity therein consists of nude or substantially nude persons dancing with or without music or engaged in movements of a sexual nature or movements simulating sexual intercourse, oral copulation, sodomy, or masturbation;

(B) The patron directly or indirectly is charged a fee or required to make a purchase in order to view entertainment or activity which consists of persons exhibiting or modeling lingerie or similar undergarments; or

(C) The patron directly or indirectly is charged a fee to engage in personal contact by employees, devices, or equipment, or by personnel provided by the establishment.

Such term shall include, but shall not be limited to, bathhouses, lingerie modeling studios, and related or similar activities. Such term shall not include businesses or commercial establishments which have as their sole purpose the improvement of health and physical fitness through special equipment and facilities, rather than entertainment.

(2) 'Commission' means the Safe Harbor for Sexually Exploited Children Fund Commission.

(3) 'Fund' means the Safe Harbor for Sexually Exploited Children Fund.

(4) 'Safe house' means a licensed residential facility that provides safe and secure shelter.

(5) 'Sexually explicit conduct' shall have the same meaning as set forth in Code Section 16-12-100.

(6) 'Sexually exploited child' means a person who is younger than 18 years of age who:

(A) Has been the victim of trafficking of persons for sexual servitude in violation of Code Section 16-5-46;

(B) Has engaged in sodomy, prostitution, solicitation of sodomy, or masturbation for hire; or

(C) Has been the victim of sexually explicit conduct for the purpose of producing any print or visual medium.

(7) 'Substantially nude' means dressed in a manner so as to display any portion of the female breast below the top of the areola or displaying any portion of any person's pubic hair, anus, cleft of the buttocks, vulva, or genitals.

(8) 'Visual medium' shall have the same meaning as set forth in Code Section 16-12-100.

15-21-202.

(a) There is established the Safe Harbor for Sexually Exploited Children Fund Commission which is assigned to the Division of Family and Children Services of the Department of Human Resources for administrative purposes only, as prescribed in Code Section 50-4-3.

(b) There is created the Safe Harbor for Sexually Exploited Children Fund as a separate fund in the state treasury. The state treasurer shall credit to the fund all amounts transferred to the fund and shall invest the fund moneys in the same manner as authorized for investing other moneys in the state treasury.

197 (c) The commission may authorize the disbursement of available money from the fund,  
198 after appropriation thereof, for purposes of providing care, rehabilitative services,  
199 residential housing, health services, and social services, including establishing safe houses,  
200 to sexually exploited children and to a person, entity, or program eligible pursuant to  
201 criteria to be set by the commission. The commission shall also consider disbursement of  
202 available money from the fund to a person, entity, or program devoted to awareness and  
203 prevention of becoming a sexually exploited child. The commission may also authorize  
204 the disbursement of fund money for the actual and necessary operating expenses that the  
205 commission incurs in performing its duties; provided, however, that such disbursements  
206 shall be kept at a minimum in furtherance of the primary purpose of the fund, which is to  
207 disburse money to provide care and rehabilitative and social services for sexually exploited  
208 children.

209 (d) No funds shall be disbursed from the fund to any person, entity, or program or for any  
210 purpose authorized in subsection (c) of this Code section until approved by the Governor;  
211 provided, however, that the Governor shall not authorize the disbursement of funds to a  
212 person, entity, or program which the commission has not recommended for a grant.

213 15-21-203.

214 (a) The commission shall consist of eight members. Seven of the members shall serve for  
215 terms of two years, except that with respect to the first members appointed, two members  
216 shall be appointed for terms of three years, four members for terms of two years, and one  
217 member for a term of one year. The director of the Division of Family and Children  
218 Services of the Department of Human Services shall be a permanent member of the  
219 commission. The chairperson of the Criminal Justice Coordinating Council, the  
220 commissioner of behavioral health and developmental disabilities, and the director of the  
221 Division of Family and Children Services of the Department of Human Services shall each  
222 appoint one member of the commission; the remaining four members shall be appointed  
223 by the Governor. The Governor shall establish initial terms of office for all members of  
224 the commission within the limitations of this subsection.

225 (b) In the event of death, resignation, disqualification, or removal for any reason of any  
226 member of the commission, the vacancy shall be filled in the same manner as the original  
227 appointment, and the successor shall serve for the unexpired term.

228 (c) Membership on the commission shall not constitute public office, and no member shall  
229 be disqualified from holding public office by reason of his or her membership.

230 (d) The Governor shall designate a chairperson of the commission from among the  
231 members, which chairperson shall serve in that position at the pleasure of the Governor.  
232 The commission may elect such other officers and committees as it considers appropriate.

(e) The commission, with the approval of the Governor, may employ such professional, technical, or clerical personnel as deemed necessary to carry out the purposes of this article.

15-21-204.

Members of the commission shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the commission is in attendance at a meeting of such commission, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal car in connection with such attendance as members of the General Assembly receive. Such expense and travel allowance shall be paid in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance. Expense allowances and other costs authorized in this Code section shall be paid from moneys in the fund.

15-21-205.

(a) The commission shall:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties on the call of the chairperson or the Governor;

(2) Maintain minutes of its meetings;

(3) Adopt rules and regulations for the transaction of its business;

(4) Accept applications for disbursements of available money from the fund;

(5) Develop a state-wide protocol for helping to coordinate the delivery of services to sexually exploited children;

(6) Provide oversight and accountability for any program that receives disbursements from the fund;

(7) Maintain records of all its expenditures, funds received as gifts and donations, and disbursements made from the fund; and

(8) Conform to the standards and requirements prescribed by the state accounting officer pursuant to Chapter 5B of Title 50.

(b) The commission shall utilize existing state resources and staff of participating departments whenever practicable.

15-21-206.

The commission may recommend to the Governor and the General Assembly changes in state programs, laws, policies, budgets, and standards relating to the care and rehabilitation of sexually exploited children, changes to improve coordination among state agencies that



provide care and rehabilitative and social services to sexually exploited children, and changes to improve the condition of sexually exploited children who are in need of rehabilitative and social services.

15-21-207.

The commission may accept and solicit federal funds granted by Congress or executive order for the purposes of this article as well as gifts and donations from individuals, private organizations, or foundations. The acceptance and use of federal funds shall not commit state funds and shall not place an obligation upon the General Assembly to continue the purposes for which the federal funds are made available. All such funds received in the manner described in this Code section shall be transmitted to the state treasurer for deposit into the fund to be disbursed as other moneys in the fund.

15-21-208.

(a) In every case in which any court in this state shall impose a fine, which shall be construed to include costs, for trafficking a person for sexual servitude in violation of Code Section 16-5-46 or any violation of Code Section 16-6-10, 16-6-11, 16-6-12, 16-6-14, 16-6-15, 16-6-16, or 16-12-100, there shall be imposed an additional penalty of \$2,500.00 if the defendant was 18 years of age or older at the time of the offense.

(b) Such sums shall be in addition to any amount required to be paid into any pension, annuity, or retirement fund under Title 47 or any other law and in addition to any other amounts provided for in this chapter.

(c) The sums provided for in this Code section shall be assessed and collected by the clerk or court officer charged with the duty of collecting moneys arising from fines and shall be paid over by the last day of the following month to the Georgia Superior Court Clerks' Cooperative Authority for remittance to the Safe Harbor for Sexually Exploited Children Fund Commission, to be deposited into the Safe Harbor for Sexually Exploited Children Fund.

(d) Any person whose duty it is to collect and remit the sums provided for in this Code section who refuses to so remit shall be guilty of a misdemeanor.

15-21-209.

(a) By January 30 of each calendar year, each adult entertainment establishment shall pay to the Department of Revenue a state operation fee equal to the greater of 1 percent of the previous year's gross revenue or \$5,000.00. This state fee shall be in addition to any other fees required by the county or municipality authorizing the operation of an adult entertainment business.

(b) The previous year's gross revenue of an adult entertainment establishment shall be determined based upon tax returns filed with the Department of Revenue. The commissioner of revenue may audit the returns of an adult entertainment establishment if he or she determines an audit to be necessary. The commissioner of revenue shall provide for conducting periodic compliance audits by the Department of Revenue to verify compliance with the requirements of this Code section.

(c) The fees collected pursuant to this Code section shall be remitted to the Safe Harbor for Sexually Exploited Children Fund Commission, to be deposited into the Safe Harbor for Sexually Exploited Children Fund.

(d) The commissioner of revenue shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section, including the method of appeal by an adult entertainment establishment that is assessed a fee pursuant to this Code section."

#### **PART IV**

#### **SECTION 4-1.**

Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual offenses, is amended by revising subsection (c) of Code Section 16-6-13.2, relating to forfeiture and seizure of property and in rem actions, as follows:

"(c)(1) Any motor vehicle operated by a person to facilitate a violation of Code Section 16-6-10, 16-6-11, 16-6-12, or 16-6-14 ~~where the offense involved the pimping of a person under the age of 18 years to perform an act of prostitution and involved a motor vehicle or operated by a person who has been convicted of or pleaded nolo contendere for two previous violations of Code Section 16-6-11 or 16-6-12 involving a motor vehicle within a five-year period and who is convicted or pleads nolo contendere to a third violation of Code Section 16-6-11 or 16-6-12 involving a motor vehicle within the same five-year period~~ is declared to be contraband and subject to forfeiture to the state, as provided in this Code section.

(2) For the purpose of this subsection, a violation of Code Section 16-6-10, 16-6-11, or 16-6-12, or 16-6-14 involving a motor vehicle shall mean a violation of Code Section 16-6-10, 16-6-11, or 16-6-12, or 16-6-14 in which a motor vehicle is used to violate said Code section or in which the violation occurred."

#### **SECTION 4-2.**

Said chapter is further amended by revising subsection (a) of Code Section 16-6-13.3, relating to proceeds from pimping, forfeiture, and distribution, as follows:

"(a) Any proceeds or money which is ~~used, intended for use, used, directly or indirectly,~~  
~~used or intended for use~~ in any manner to facilitate; or derived from a violation of Code  
 Section ~~16-6-10, 16-6-11,~~ wherein any of the persons involved in performing an act of  
~~prostitution is under the age of 18, is~~ 16-6-12, or 16-6-14 is declared to be contraband and  
 shall be forfeited to the state and no person shall have a property interest in it such proceeds  
or money. Such proceeds or money may be seized or detained in the same manner as  
 provided in Code Section 16-13-49 and shall not be subject to replevin, conveyance,  
 sequestration, or attachment."

### SECTION 4-3.

Code Section 42-1-12 of the Official Code of Georgia Annotated, relating to the State Sexual  
 Offender Registry, is amended by adding a new subparagraph to paragraph (10) of subsection  
 (a) to read as follows:

"(B.1) 'Dangerous sexual offense' with respect to convictions occurring on or after July  
1, 2015, means trafficking a person for sexual servitude in violation of Code Section  
16-5-46, or the attempt to commit such offense, or any offense under federal law or the  
laws of another state or territory of the United States which consists of the same or  
similar elements of such offense."

### SECTION 4-4.

Article 1 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to  
 children and youth services, is amended by revising Code Section 49-5-8, relating to the  
 powers and duties of department, by adding a new subsection to read as follows:

"(d)(1) As used in this subsection, the term 'sexually exploited child' shall have the same  
meaning as set forth in Code Section 15-21-201.

(2) The department, in consultation with the Office of the Child Advocate for the  
Protection of Children, the Criminal Justice Coordinating Council, and law enforcement  
officials, shall develop a plan for the delivery of services to sexually exploited children,  
victims of trafficking of persons for labor servitude, and such children and persons who  
are at risk of becoming victims of such offenses. In developing such plan, the department  
shall work with state and federal agencies, public and private entities, and other  
stakeholders as it deems appropriate and shall periodically review such plans to ensure  
appropriate services are being delivered. Such plan shall include:

(A) Identifying children who need services;

(B) Providing assistance with applications for federal and state benefits, compensation,  
and services;

369 (C) Coordinating the delivery of physical and mental health, housing, education, job  
370 training, child care, legal, and other services;  
371 (D) Preparing and disseminating educational and training materials to increase  
372 awareness of available services;  
373 (E) Developing and maintaining community based services;  
374 (F) Providing assistance with family reunification or repatriation to a country of origin;  
375 and  
376 (G) Providing law enforcement officials assistance in identifying children in need of  
377 such services."

378 **PART V**  
379 **SECTION 5-1.**

380 Parts 1, 2, and 4 and this part of this Act shall become effective on July 1, 2015. Part 3 of  
381 this Act shall become effective on January 1, 2017, provided that a constitutional amendment  
382 is passed by the General Assembly and is ratified by the voters in the November, 2016,  
383 General Election amending the Constitution of Georgia to authorize the General Assembly  
384 to provide specific funding to the Safe Harbor for Sexually Exploited Children Fund. If such  
385 an amendment to the Constitution of Georgia is not so ratified, then Part 3 of this Act shall  
386 not become effective and shall stand repealed by operation of law.

387 **SECTION 5-2.**  
388 All laws and parts of laws in conflict with this Act are repealed.