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SB 33: Civil Cause of Action Against Human Traffickers

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TORTS

General Provisions: Amend Chapter 1 of Title 51 of the Official Code of Georgia Annotated, Relating to General Provisions regarding Torts, so as to Provide a Cause of Action Against Perpetrators for Victims of Human Trafficking; Provide for Definitions; Provide a Cause of Action Against Perpetrators of Human Trafficking by the Attorney General on Behalf of the State; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS:	O.C.G.A. § 51-1-56 (new)
BILL NUMBER:	SB 33
ACT NUMBER:	28
GEORGIA LAWS:	2021 Ga. Laws Act 28
SUMMARY:	The Act creates a new civil cause of action against human traffickers. It allows both victims and the Attorney General to sue traffickers and those benefitting financially from human trafficking for damages and reasonable attorney's fees. The plaintiffs can file their lawsuit within ten years after the cause of action arose or, if the victim was a minor at the time of the violation, within ten years after the victim turned eighteen-years-old.
EFFECTIVE DATE:	July 21, 2021

History

Atlanta is a significant hub for human trafficking.¹ Building on a robust anti-trafficking movement in Georgia, First Lady Marty Kemp

1. *GRACE Commission, First Lady*, OFF. OF THE GOVERNOR [hereinafter *GRACE Commission Site*], <https://gov.georgia.gov/first-lady/grace-commission> [https://perma.cc/S7RY-F5UL].

felt she had to use her platform to address the issue.² Since 2019, she has cochaired the Georgians for Refuge, Action, Compassion, and Education (GRACE) Commission, a panel of public and private leaders committed to combatting human trafficking in the state.³ The GRACE Commission regularly consults with an expert panel and survivors of human trafficking to identify gaps in the law surrounding human trafficking and has dedicated itself to filling those gaps.⁴ Since Marty Kemp's husband, Governor Brian Kemp (R), assumed office in 2019, he has advocated for and signed five bills related to human trafficking in addition to signing Senate Bill (SB) 33 and SB 34 into law in 2021.⁵

In assessing gaps in the law, the GRACE Commission identified that Georgia lacked a civil cause of action against perpetrators of human trafficking. The Trafficking Victims Protection Act (TVPA) has provided civil remedies at the federal level since 2003 by “allow[ing] trafficking victims to sue their traffickers for money damages in federal court.”⁶ Since then, at least forty states and the District of Columbia have followed suit and allowed for state civil lawsuits.⁷ With the passing of SB 33, Georgia now joins those states in providing trafficking victims the option to pursue civil suits.⁸

SB 33 grew out of the GRACE Commission's work and mirrors the TVPA's civil cause of action provision.⁹ Senator Clint Dixon (R-45th)

2. Marlena Wilson, *Georgia's First Lady Fighting to End Human Trafficking in the State*, WJBF NEWS: MEANS REP., <https://www.wjbf.com/featured/the-means-report/georgias-first-lady-fighting-to-end-human-trafficking-in-the-state/> [https://perma.cc/E2BF-BMY Y] (Jan. 30, 2021, 8:50 PM).

3. GRACE Commission Site, *supra* note 1.

4. Patricia Murphy, *How Marty Kemp Put Human Trafficking on the Capitol Agenda*, ATLANTA J.-CONST. (Feb. 19, 2021), <https://www.ajc.com/politics/opinion-how-marty-kemp-put-human-trafficking-on-the-state-capitols-agenda/B6W7ZVV5OBDNLJXQUUDU7GJRM4Q/> [https://perma.cc/6M67-5HHT].

5. *Id.* In addition to influencing legislative efforts, the GRACE Commission launched Human Trafficking Awareness Training for State of Georgia employees and the public in January 2020. *Id.*

6. ALEXANDRA F. LEVY, HUM. TRAFFICKING LEG. CTR., FEDERAL HUMAN TRAFFICKING CIVIL LITIGATION: 15 YEARS OF THE PRIVATE RIGHT OF ACTION 7 (Martina R. Vandenberg & Andrew B. Cherry eds., 2018) [hereinafter LEVY REPORT], <https://www.htlegalcenter.org/wp-content/uploads/Federal-Human-Trafficking-Civil-Litigation-1.pdf> [https://perma.cc/JX6U-34H2].

7. Electronic Mail Interview with Jonathan Todres, Distinguished Univ. Professor & Professor of L., Ga. State Univ. Coll. of L. (May 25, 2021) (on file with the Georgia State University Law Review) [hereinafter Todres Interview]; 164 AM. JUR. *Trials* § 295, Westlaw (database updated May 2021).

8. 2021 Ga. Laws Act 28.

9. Telephone Interview with Sen. Clint Dixon (R-45th) (May 27, 2021) (on file with the Georgia State University Law Review) [hereinafter Dixon Interview]; 18 U.S.C. § 1595.

sponsored SB 33 in the Senate on behalf of First Lady Kemp and the GRACE Commission.¹⁰ Senator Dixon touted the bill's importance, saying that it is essential legislation that provides an additional layer of protection for trafficking victims.¹¹ By allowing victims to file suits against third parties, SB 33 aims to deter businesses, like hotels and trucking companies, from knowingly or inadvertently being involved in trafficking rings.¹²

SB 33 mirrors the TVPA's provision so that an identical statute can apply in state courts for actors who would not be subject to federal jurisdiction.¹³ SB 33 allows victims or state officials to seek money damages from traffickers and other third parties who have benefitted financially from participating in a trafficking scheme.¹⁴ Allowing trafficking survivors to sue in civil court "is an important measure because often the criminal justice process does not provide any remedy to victims and survivors."¹⁵

Bill Tracking of SB 33

Consideration and Passage by the Senate

Senator Clint Dixon (R-45th) sponsored SB 33 in the Senate with Senator Bo Hatchett (R-50th), Senator Jeff Mullis (R-53rd), Senator Butch Miller (R-49th), Senator Lester Jackson (D-2nd), and others cosponsoring.¹⁶ The bill was placed in the hopper on January 27, 2021, and the Senate first read it on January 28, 2021.¹⁷ The Senate referred

10. Dixon Interview, *supra* note 9.

11. *Id.*

12. *Id.*

13. Video Recording of Senate Judiciary Committee Meeting at 43 min., 44 sec. (Feb. 8, 2021) [hereinafter Senate Judiciary Committee Video] (remarks by Trey Bennett, Deputy Exec. Couns., Off. of Governor Brian P. Kemp), <https://www.youtube.com/watch?v=7qSUQ8F8QEM&t=3208s>.

14. 2021 Ga. Laws Act 28.

15. Todres Interview, *supra* note 7.

16. Georgia General Assembly, SB 33, Bill Tracking [hereinafter SB 33, Bill Tracking], <https://www.legis.ga.gov/legislation/59057>.

17. State of Georgia Final Composite Status Sheet, SB 33, Apr. 6, 2021; SB 33, Bill Tracking, *supra* note 16.

the bill to the Senate Judiciary Committee the same day.¹⁸ The Senate Committee favorably reported the bill on February 9, 2021.¹⁹

The Senate then read the bill for the second time on February 10, 2021.²⁰ The next day, on February 11, 2021, the Senate read the bill for the third time.²¹ No amendments were introduced, and on February 11, 2021, the Senate passed and adopted the bill unanimously by a vote of 50 to 0.²²

Consideration and Passage by the House

Representative Josh Bonner (R-72nd) sponsored SB 33 in the House, and the House read the bill for the first time on February 16, 2021.²³ The House read the bill for a second time on February 17, 2021.²⁴ The House Judiciary Committee reported favorably on the bill without opposition on March 18, 2021.²⁵

The House read the bill for the third time on March 23, 2021, and the bill passed unanimously by a vote of 164 to 0 that same day.²⁶ The Senate sent the bill to Governor Kemp (R) on April 7, 2021, and he signed it into law as Act 28 on April 27, 2021.²⁷ The Act's effective date is July 1, 2021.²⁸

18. SB 33, Bill Tracking, *supra* note 16.

19. State of Georgia Final Composite Status Sheet, SB 33, May 13, 2021; SB 33, Bill Tracking, *supra* note 16.

20. State of Georgia Final Composite Status Sheet, SB 33, May 13, 2021; SB 33, Bill Tracking, *supra* note 16.

21. State of Georgia Final Composite Status Sheet, SB 33, May 13, 2021; SB 33, Bill Tracking, *supra* note 16.

22. Georgia Senate Voting Record, SB 33, #38 (Feb. 25, 2021); State of Georgia Final Composite Status Sheet, SB 33, May 13, 2021; SB 33, Bill Tracking, *supra* note 16.

23. SB 33, Bill Tracking, *supra* note 16; State of Georgia Final Composite Status Sheet, SB 33, May 13, 2021.

24. State of Georgia Final Composite Status Sheet, SB 33, May 13, 2021.

25. SB 33, Bill Tracking, *supra* note 16; State of Georgia Final Composite Status Sheet, SB 33, May 13, 2021.

26. SB 33, Bill Tracking, *supra* note 16; Georgia House of Representatives Voting Record, SB 33, #289 (Mar. 24, 2021); State of Georgia Final Composite Status Sheet, SB 33, May 13, 2021.

27. State of Georgia Final Composite Status Sheet, SB 33, May 13, 2021.

28. SB 33, Bill Tracking, *supra* note 16; O.C.G.A. § 51-1-56 (Supp. 2021).

The Act

The Act amends Title 51 of the Official Code of Georgia Annotated to provide a new Code section that creates a civil cause of action for victims of human trafficking and allows for the Attorney General to obtain relief on behalf of the state against perpetrators of human trafficking.²⁹

Paragraph (a)

Paragraph (a) of the Act provides definitions for the terms “criminal action” and “perpetrator” as used in subsequent paragraphs (b), (c), and (e).³⁰ “Criminal action” refers to any investigation or prosecution of an offense that is pending final adjudication in a trial court.³¹ “Perpetrator” is defined broadly to include any person or entity that knowingly benefits, financially or otherwise, from participating in a scheme that such person or entity knew, or should have known, involved a violation of Code section 16-5-46.³² Notably, this definition expands the list of entities that can be held liable for human trafficking beyond those potentially criminally liable under Code section 16-5-46.³³

Paragraph (b)

Paragraph (b) reflects the main purpose of the Act: it provides that anyone who is a victim of labor or sexual servitude—the criminal human trafficking violations outlined in Code section 16-5-46—shall also have a civil cause of action against perpetrators of human trafficking and may recover damages and reasonable attorney’s fees.³⁴

29. O.C.G.A. § 51-1-56 (Supp. 2021).

30. O.C.G.A. § 51-1-56(a) (Supp. 2021).

31. O.C.G.A. § 51-1-56(a)(1) (Supp. 2021).

32. O.C.G.A. § 51-1-56(a)(2) (Supp. 2021); O.C.G.A. § 16-5-46 (2019).

33. O.C.G.A. § 51-1-56(a)(2) (Supp. 2021); § 16-5-46 (2019).

34. O.C.G.A. § 51-1-56(b) (Supp. 2021).

Paragraph (c)

Paragraph (c) clarifies the procedure that applies when a trafficking victim files a civil action under this Code section, and the same victim is part of a trafficking occurrence that gives rise to a criminal action currently pending adjudication.³⁵ In that case, the trafficking victim’s civil suit “shall be stayed during [the] pendency of the criminal action.”³⁶

Paragraph (d)

Paragraph (d) defines the statute of limitations for this Code section. It provides that a trafficking victim may file a civil cause of action under paragraph (b) within ten years after (1) the cause of action arose or (2) the victim reaches eighteen years of age if the victim was a minor at the time of the alleged violation.³⁷

Paragraph (e)

Finally, paragraph (e) rounds out the Act by giving the Attorney General a limited civil cause of action against perpetrators of human trafficking.³⁸ Whenever the Attorney General “has reasonable cause to believe that an interest of the citizens of this state has been or is threatened or adversely affected by a perpetrator,” she may bring a civil action on behalf of the state to obtain appropriate relief.³⁹ The “appropriate relief” that the Act’s drafters imagined includes injunctive relief; for example, the drafters intended for this relief provision to allow the Attorney General to shut down a hotel if the hotel qualifies as a perpetrator under paragraph (a) by benefitting financially from human trafficking.⁴⁰

35. O.C.G.A. § 51-1-56(c) (Supp. 2021).

36. *Id.*

37. O.C.G.A. § 51-1-56(d) (Supp. 2021).

38. O.C.G.A. § 51-1-56(e) (Supp. 2021).

39. *Id.*

40. Senate Judiciary Committee Video, *supra* note 13, at 46 min., 02 sec.

*Analysis**Likely Effects*

While the Act's impact on human trafficking in Georgia remains to be seen, trends at the federal level illuminate likely effects. Congress created a civil cause of action in the TVPA "on the belief 'that the additional enforcement activity resulting from private civil actions [would be] worthwhile.'"⁴¹ At the federal level, civil trafficking lawsuits have filled gaps in the criminal system, particularly for forced labor cases, because federal prosecutors often focus on sex trafficking to the exclusion of labor trafficking.⁴² Since Congress added the civil cause of action provision to the TVPA in 2003, the number of civil trafficking cases filed has risen steadily: more than six times as many federal cases were filed in 2017 (thirty-seven federal cases) than in 2004 (six federal cases).⁴³

The overwhelming majority of civil trafficking cases involve claims of forced labor.⁴⁴ Only 8% of civil trafficking cases have focused on claims of sex trafficking.⁴⁵ The explanation for this discrepancy likely comes from the structure of the criminal and civil systems: "[T]he civil system operates as a substitute for the criminal one. Because sex trafficking victims are more likely to see their cases prosecuted, they are less likely to file civil cases."⁴⁶ Given the civil-trafficking case trends at the federal level, it is likely that the Act will facilitate bringing more forced labor cases in Georgia.

Third-Party Liability

Perhaps the most significant effect of the Act is that it expands the range of possible trafficking defendants. The Act's definition of

41. LEVY REPORT, *supra* note 6, at 7 (quoting H.R. REP. 108-264, pt. 2, at 16 (2003)). *But see* Todres Interview, *supra* note 7 (suggesting that the threat of civil liability is not known to deter human trafficking).

42. LEVY REPORT, *supra* note 6, at 7.

43. *Id.* at 10.

44. *Id.* at 15.

45. *Id.*

46. *Id.*

“perpetrator” mimics the TVPA’s 2008 amendment that allows lawsuits against “whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of [federal laws prohibiting peonage, slavery, forced labor, and trafficking].”⁴⁷ Expanding who qualifies as a perpetrator allows trafficking victims to recover damages from their traffickers *and* third parties who knowingly benefit from their trafficking.⁴⁸ For example, possible third parties include motel owners, hotels, doctors, labor recruiters, and others.⁴⁹ In 2020, 48% of the defendants in civil sex trafficking suits were hotels.⁵⁰

In *Ricchio v. McLean*, a trafficking survivor used the TVPA’s third-party provision to sue the motel’s owners in which her trafficker held her captive.⁵¹ Similarly, in *Doe v. Dabbagh*, a trafficking survivor used the third-party provision to sue a psychiatrist for providing “her trafficker with access to medications that the trafficker then used to subdue her.”⁵²

These kinds of suits are the exact sort that Georgia legislators sought to make possible with SB 33.⁵³ In fact, some local hotels and trucking companies pushed back against the Act, hoping to relieve themselves of potential civil liability if they provide comprehensive training to their employees. Georgia lawmakers declined to dilute the Act in that way, recognizing the importance of third-party liability in exposing and dismantling trafficking rings.⁵⁴

Although allowing third-party liability was important to Georgia legislators, some questioned whether the Act was too broad.⁵⁵ Senator Elena Parent (D-42nd) questioned the amount of financial gain needed

47. *Id.* at 22 (quoting 18 U.S.C. § 1595(a)).

48. LEVY REPORT, *supra* note 6, at 22; O.C.G.A. § 51-1-56(a) (Supp. 2021) (emphasis added).

49. LEVY REPORT, *supra* note 6, at 22.

50. KYLEIGH FEEHS & ALYSSA CURRIER WHEELER, 2020 FED. HUMAN TRAFFICKING REP. 55 (2021) [hereinafter 2020 FEDERAL HUMAN TRAFFICKING REPORT], <https://www.traffickinginstitute.org/wp-content/uploads/2021/06/2020-Federal-Human-Trafficking-Report-Low-Res.pdf> [<https://perma.cc/P5AT-W2J4>].

51. *See generally* *Ricchio v. McLean*, 853 F.3d 553 (1st Cir. 2017).

52. LEVY REPORT, *supra* note 6, at 22; *See generally* *Doe v. Dabbagh*, No.15-cv-10724, 2015 WL 13806540 (E.D. Mich. May 28, 2015).

53. *See* Dixon Interview, *supra* note 9.

54. *See id.*

55. Senate Judiciary Committee Video, *supra* note 13, at 38 min., 20 sec.

to trigger third-party liability: if someone made \$2 from a trafficking scheme, would that expose them to liability?⁵⁶ The Act's drafter clarified that the amount needed to trigger liability is intentionally low—\$2 would constitute financial gain—because liability hinges on (1) whether a person or entity knew, or should have known, that they were participating in a scheme violating the criminal trafficking statute and (2) whether that person or entity knowingly benefitted from their participation.⁵⁷

John Melvin, Assistant Director of the Georgia Bureau of Investigation (GBI) and former prosecutor, explained the reason for including the “should have known” language in the Act: it allows liability for deliberate ignorance.⁵⁸ For example, motel owners who witness young women and older men continuously entering and exiting a motel room would likely be unsuccessful in arguing that they were unaware of trafficking occurring on their premises because, given these telltale signs, they should have known that trafficking was happening.⁵⁹

Overall, the Act's third-party liability provision is a powerful tool to hold those benefitting from trafficking accountable, but its broad language will likely require the courts to define the Act's contours.

Limitations of the Act

Although the Act provides important measures to allow victims and survivors of human trafficking to obtain civil remedies, it is only “one piece in the puzzle.”⁶⁰ Generally, anti-trafficking efforts fall into three broad categories, known as the “3Ps paradigm”: prosecution, protection, and prevention.⁶¹ The Act falls squarely into the second

56. *Id.*

57. *Id.* at 46 min., 02 sec.

58. *Id.* at 51 min.

59. *Id.* (“The classic case [of deliberate ignorance] is a man who constantly gets boxes, and then gets paid \$200 per box, but he never says, ‘why am I getting these boxes?’ And then somebody else comes pick them up, and of course that guy’s involved in the trafficking of drugs.”).

60. Todres Interview, *supra* note 7.

61. *See id.*; Off. to Monitor & Combat Trafficking in Persons, *3Ps: Prosecution, Protection, and Prevention*, U.S. DEP’T STATE (July 18, 2021) [hereinafter TIP Office], <https://www.state.gov/3ps-prosecution-protection-and-prevention/> [https://perma.cc/J2LP-3HVR].

category by helping survivors in their recovery.⁶² The threat of a civil lawsuit by a survivor, however, is not known to deter perpetrators from engaging in human trafficking in the future.⁶³ Thus, effective preventive measures, including those directly addressing the tactics of human traffickers, continue to be necessary.⁶⁴

Importantly, survivors still face many challenges in their recovery. Not all survivors, for instance, may wish to relive the trauma of their experiences in a civil trial.⁶⁵ Thus, not all survivors will benefit equally from the Act.⁶⁶ For their trials to be effective, survivors also must have access to attorneys that can handle their cases in a way that helps them heal.⁶⁷ Also, survivors may face challenges collecting their awards.⁶⁸ For instance, if the Georgia defendant is a convicted trafficker whose assets have been seized, a survivor may not have much to collect.⁶⁹ Finally, Congress directed federal courts to order mandatory restitution for any offense committed under the anti-trafficking statutes.⁷⁰ Yet, despite the fact that restitution is mandatory, nearly half of prosecutors do not request it at all, and the question of whether it should be awarded is still under debate.⁷¹

62. Todres Interview, *supra* note 7.

63. *See id.*

64. TIP Office, *supra* note 61. *See generally* JONATHAN TODRES & ANGELA DIAZ, PREVENTING CHILD TRAFFICKING: A PUBLIC HEALTH APPROACH (2019).

65. Todres Interview, *supra* note 7.

66. *Id.*

67. *Id.*

68. *Id.*; *see* LEVY REPORT, *supra* note 6, at 27. The report states as follows:

Trafficking survivors seeking to hold perpetrators accountable confront an array of challenges. One of the most fundamental is collectability of judgments. Indeed, this is a factor in the large number of cases that settle out of court; pursuing collection on a judgment can take years. It is not possible to discern from court dockets whether the plaintiffs ever collected the full amount of a jury verdict, bench verdict, or default judgment. Collection can be particularly difficult when the defendants depart the United States, a common problem in cases involving diplomats and international organization employees.

Id.

69. Todres Interview, *supra* note 7.

70. 18 U.S.C. § 1593; *see* ALEXANDRA F. LEVY, MARTINA E. VANDENBERG & LYRIC CHEN, WHEN “MANDATORY” DOES NOT MEAN MANDATORY: FAILURE TO OBTAIN CRIMINAL RESTITUTION IN FEDERAL PROSECUTION OF HUMAN TRAFFICKING CASES IN THE UNITED STATES 1 (Michelle D Miller ed., 2018) [hereinafter HUMAN TRAFFICKING LEGAL CENTER REPORT], <https://www.htlegalcenter.org/wp-content/uploads/HTProBono-Trafficking-Restitution-Report.pdf> [<https://perma.cc/CX62-WECT>].

71. HUMAN TRAFFICKING LEGAL CENTER REPORT, *supra* note 70, at 15.

Conclusion

SB 33 is a critical tool in Georgia's arsenal against human trafficking. The Act mirrors federal law, which has provided a civil cause of action for trafficking victims since 2003, by providing Georgia trafficking victims with the ability to sue their traffickers and liable third parties for damages in civil court. Trends at the federal level show that the number of civil trafficking suits has steadily grown every year since the cause of action was added: thirty-seven cases were filed in 2017, and fifty-three were filed in 2020.⁷² If Georgia follows the federal trend, Georgia is likely to see a slow-but-steady increase over time in the number of trafficking survivors opting to pursue civil suits. Overall, the Act is an important step forward in the broader fight against human trafficking, and it will enable some survivors to finally secure a remedy for the harms inflicted on them.⁷³

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72. LEVY REPORT, *supra* note 6, at 22; 2020 FEDERAL HUMAN TRAFFICKING REPORT, *supra* note 50, at 17.

73. See Todres Interview, *supra* note 7.