

SENATE No. 58

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relating to anti-human trafficking and protection..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 10 of the General Laws is hereby amended by inserting after
2 section 66 the following section:-

3 Section 66A. There shall be established and set up on the books of the commonwealth a
4 separate fund to be known as the Victims of Human Trafficking Trust Fund. The fund shall
5 consist of assets forfeited and the proceeds of assets seized and forfeited pursuant to chapter
6 265A and fines and assessments collected pursuant to said chapter 265A, together with any
7 interest or earnings accrued on such monies through investment or deposit. The state treasurer
8 shall be the custodian of the fund and shall receive, deposit and invest all monies transmitted to
9 him under this section in accordance with sections 34, 34A and 38 of chapter 29 in such a
10 manner as to secure the highest rate of return available consistent with the safety of the fund, and
11 shall credit interest and earnings on the trust fund corpus to the trust fund. The state treasurer
12 shall transfer funds from the income and receipts of the fund to the victim and witness assistance
13 board, as established in section 4 of chapter 258B, from time to time, at the request of the office.
14 The board shall award and administer grants from the fund, without further appropriation, to

public, private non-profit or community-based programs in the commonwealth to provide services to human trafficking victims, as defined in section 1 of said chapter 265A including, but not limited to, legal and case management services, health care, mental health, social services, housing or shelter services, education, job training or preparation, interpreting services, English-as-a-second-language classes, victims' compensation, and public and private non-profit collaborations to protect and assist human trafficking victims. The board shall develop, in conjunction with the Anti-Human Trafficking Task Force established by section 20 of chapter 265A, written criteria for the awarding of those grants, which shall be evaluated and, if necessary, revised on an annual basis.

The board shall file a report detailing the amount of funds collected and expended from the fund along with a copy of the written criteria used to expend the funds to the house and senate committees on ways and means not later than August 15 of each calendar year. An amount not to exceed 5 per cent of the total funds deposited in the fund may be expended by the office for administrative costs directly attributable to the grants and programs funded by the fund including, but not limited to, the costs of clerical and support personnel. Any unexpended balance of monies in the fund at the end of the fiscal year shall not revert to the General Fund but shall remain available for expenditure from such fund in subsequent fiscal years. No expenditure made from the fund shall cause the fund to become deficient at any point during a fiscal year.

SECTION 2. Section 2 of chapter 62 of the General Laws, as so appearing, is hereby amended by inserting after the word "year", in line 179, the following subparagraph:-

(Q) Any amounts received by a human trafficking victim, as defined in section 1 of chapter 265A, pursuant to an action for involuntary servitude, trafficking of persons for forced labor or services or sexual servitude.

SECTION 3. Section 51A of chapter 119, as so appearing, is hereby amended by striking the seventh paragraph and inserting in place thereof the following paragraph:-

Any privilege established by sections 135A and 138B of chapter 112 or by sections 20A, 20B or 20M of chapter 233, relating to confidential communications shall not prohibit the filing of a report pursuant to this section or section 24.

SECTION 4. Chapter 231 of the 2004 official edition of the general laws is hereby amended by inserting, after section 59H, the following section:-

Section 59I. In any civil action in any court of the commonwealth in which the plaintiff alleges to be a human trafficking victim, as defined in section 1 of chapter 265A, the court shall, upon motion of the plaintiff, advance the proceeding for speedy trial so that it may be heard and determined with as little delay as possible.

SECTION 5. Chapter 233 of the General Laws, as so appearing, is hereby amended by inserting after section 11 the following new section:

Section 11A. Notwithstanding any general or special law to the contrary, in any civil action or other civil judicial proceeding commenced by a person alleging to be a human trafficking victim, as defined in chapter 265A, in which the petitioner is unable to be present in the jurisdiction in order to prosecute such action or proceeding due to the application of the immigration laws of the United States or undue financial or other hardship, testimony of such

person may be given under oath before any ambassador or consul general or their respective designee in any embassy or consular office of the United States in any foreign country at which legal counsel for the defendant shall have the opportunity to either (a) be present and cross examine the witness, or (b) see, hear and cross examine the witness by way of video conference or other technology providing defense counsel with the opportunity to see, hear and cross examine the witness in real time. A live-video conference, a video-taped record or a transcript of such testimony shall be admissible at trial in any such action or proceeding.

SECTION 6. Said chapter 233 is hereby further amended by inserting after section 20L the following 2 sections:-

Section 20M. (a) As used in this section the following words shall unless the context clearly requires otherwise have the following meanings:—

“Confidential communication”, information transmitted in confidence by and between a human trafficking victim and a human trafficking victims’ caseworker by a means which does not disclose the information to a person other than a person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim. The term includes all information received by the human trafficking victims’ caseworker which arises out of and in the course of such counseling and assisting, including, but not limited to, reports, records, working papers or memoranda.

“Human trafficking victims’ caseworker”, a person who is employed or volunteers in program serving human trafficking, who has undergone a minimum of 25 hours of training and who reports to and is under the direct control and supervision of a direct service supervisor of a

human trafficking victims' program, and whose primary purpose is the rendering of advice, counseling or assistance to human trafficking victims.

"Human trafficking victims' program", any refuge, shelter, office, safe house, institution or center established for the purpose of offering assistance to human trafficking victims through crisis intervention, medical, legal or support counseling.

"Victim", a victim of a violation of section 2, 3, or 4 of chapter 265A and who consults a human trafficking victims' caseworker for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by such violation.

(b) A human trafficking victim's caseworker shall not disclose any confidential communication without the prior written consent of the victim, or the victim's guardian in the case of a child, except as hereinafter provided. Such confidential communication shall not be subject to discovery in any civil, legislative or administrative proceeding without the prior written consent of the victim, or victim's guardian in the case of a child to whom such confidential communication relates. In criminal actions such confidential communication shall be subject to discovery and shall be admissible as evidence but only to the extent of information contained therein which is exculpatory in relation to the defendant; provided, however, that the court shall first examine such confidential communication and shall determine whether or not such exculpatory information is therein contained before allowing such discovery or the introduction of such evidence.

(c) During the initial meeting between the caseworker and victim, the caseworker shall inform the human trafficking victim and any guardian thereof of such confidential communications and the limitations thereto.