

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 970

INTRODUCER: Criminal Justice and Senator Bracy

SUBJECT: Florida Compensation Trust Fund for Survivors of Human Trafficking/Department of Law Enforcement

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Cibula/Jones</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	<u>_____</u>	<u>_____</u>	<u>AP</u>	<u>_____</u>

I. Summary:

CS/SB 970 creates the Trust Fund for Victims of Human Trafficking and Prevention within the Department of Legal Affairs.

The purposes of the trust fund include, but are not limited to:

- Educating the public about the recruitment, trafficking, and exploitation of persons in connection with human trafficking;
- Assisting in the prevention of the recruitment of minors in Florida schools for exploitation;
- Establishing a survivors' resource center to make available to survivors of human trafficking legal services, social services, safe harbors, safe houses, and language services;
- Advertising the National Human Trafficking Resource Center hotline number and the BeFree Textline in diverse venues;
- Assisting in the coordination between law enforcement and service providers; and
- Assisting in vacating any convictions of minors who were victims of human trafficking.

The Florida Constitution requires a bill creating a new trust fund to pass by a three-fifths vote of the membership of each chamber of the Legislature. State trust funds must terminate not more than four years after the initial creation of the fund unless the Legislature sets a shorter time.

In accordance with the Florida Constitution, the trust fund is terminated on July 1, 2021.

The bill takes effect on the same date as CS/SB 972 or similar legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There is an estimated 20.9 million adults and children in the world who are in some sort of forced labor or sexual exploitation. Of that number, an estimated 26 percent of them are children, and in 2010, it was estimated that as many as 300,000 children in the United States were at risk for exploitation each year.¹

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking by using labor or services or through commercial sexual activity.²

Statewide Council on Human Trafficking

The Attorney General is the head of the Department of Legal Affairs.³ The Department of Legal Affairs (DLA) is responsible for providing all legal services required by any executive department unless otherwise provided by law. Additionally, the DLA administers certain trust funds and related programs that support crime victim services, criminal investigations,⁴ and crime prevention.⁵

The Statewide Council on Human Trafficking (council) resides within the DLA "for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to fight commercial sexual exploitation as a form of human trafficking and to support victims."⁶

Civil Cause of Action for Human Trafficking

CS/SB 972 Human Trafficking

CS/SB 972, which is linked to CS/SB 970, creates a civil cause of action for victims of human trafficking to bring against the trafficker⁷ or facilitator⁸ of human trafficking. The bill allows a

¹ U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (December 2011) available at http://ojp.gov/newsroom/factsheets/ojfps_humantrafficking.html (last visited March 26, 2017). Polaris, *Human Trafficking: The Facts*, 2016, available at <https://polarisproject.org/facts> (last visited March 26, 2017).

² See ss. 787.06(3) and (4), F.S.

³ Section 16.015, F.S.

⁴ Sections 16.555 and 16.556, F.S.

⁵ Section 16.54, F.S.

⁶ Section 16.617, F.S.

⁷ CS/SB 972 defines a "trafficker" as any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.

⁸ CS/SB 972 defines a "facilitator" as a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker, which assist or enable the trafficker to carry out human trafficking.

victim to bring a civil action against the trafficker or facilitator of human trafficking who victimized the victim. The council, with the consent of the victim, can bring a civil cause of action on behalf of the victim against the trafficker or facilitator of human trafficking who victimizes a person in Florida.

The victim, or the council on behalf of the victim, who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs.

If the council prevails on behalf of the victim, the trust fund must hold the moneys awarded for distribution to the victim, or his or her parent, legal guardian, or estate. If the victim's parent or legal guardian knowingly or through willful blindness, participated in the human trafficking, he or she is not entitled to any distribution or benefit from the trust fund. The trust fund must keep the funds if there is no person or estate to receive the funds. The bill allows these funds to be used for the purposes of the trust fund.

If a victim, or the council on behalf of the victim, prevails in an action, the court must award a civil penalty against the defendant of \$100,000. This penalty is in addition to, and not in lieu of, any other damage award. The civil penalty cannot be disclosed to the jury. The proceeds from the civil penalty must be deposited into the trust fund.

There is no statute of limitations for this civil action.

III. Effect of Proposed Changes:

The bill creates the Trust Fund for Victims of Human Trafficking and Prevention within the Department of Legal Affairs. The bill specifies that trust fund's funds must consist of funds obtained under s. 787.063, F.S., from civil actions brought on behalf of victims, from penalties imposed by the courts, and funds received from any other source, including legislative appropriations.

The purposes of the trust fund include, but are not limited to:

- Educating the public about the recruitment, trafficking, and exploitation of persons in connection with human trafficking;
- Assisting in the prevention of the recruitment of minors in Florida schools for exploitation;
- Establishing a survivors' resource center to make available to survivors of human trafficking legal services, social services, safe harbors, safe houses, and language services;
- Advertising the National Human Trafficking Resource Center hotline number and the BeFree Textline in diverse venues;
- Assisting in the coordination between law enforcement and service providers; and
- Assisting in vacating any convictions of minors who were victims of human trafficking.

In accordance with section 19(f)(2), Art. III, of the Florida Constitution, the trust fund must, unless terminated sooner, be terminated on July 1, 2021. Before its scheduled termination, the trust fund must be reviewed as provided in s. 215.3206(1) and (2), F.S.

The bill takes effect on the same date as CS/SB 972 or similar legislation is adopted in the same legislative session, or an extension thereof, and becomes law. CS/SB 972 is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Section 19(f), Art. III, of the Florida Constitution requires that a bill that creates a new trust fund must:

- Terminate not more than four years after the effective date of the bill creating the trust fund. The Legislature may set a shorter time period.
- Pass both chambers of the Legislature by a three-fifths vote of the membership of each chamber.

The bill contains a termination date of July 1, 2021, for the created trust fund.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The costs to the Department of Legal Affairs to administer the trust fund is unknown at this time. CS/SB 972 requires the court to issue a civil penalty of \$100,000, if the victim or the council prevails. The civil penalty must be deposited into the trust fund.

CS/SB 972 also provides the following appropriation:

- For the 2017-2018 Fiscal Year \$153,000 in recurring funds and \$29,000 in nonrecurring funds from the Crimes Compensation Trust Fund to the Department of Legal Affairs, and three full-time equivalent positions are authorized, for the purpose of implementing CS/SB 972.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is linked to the passage of CS/SB 972.

VIII. Statutes Affected:

This bill creates section 787.0611 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 17, 2017:

The committee substitute:

- Creates the trust fund in the Department of Legal Affairs, instead of the Department of Law Enforcement;
- Renames the trust fund;
- Specifies where the trust funds' funds come from;
- Clarifies the purposes of the trust fund; and
- Specifies that the bill is effective on the same date as CS/SB 972.

- B. **Amendments:**

None.