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LEGISLATIVE ACTION

Senate

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House

The Committee on Children, Families, and Elder Affairs (Book) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as the "Civil Cause of
Action for Victims of Human Trafficking Act."

Section 2. Section 787.061, Florida Statutes, is created to
read:

787.061 Civil actions by victims of human trafficking.—

(1) FINDINGS.—The Legislature finds that, to achieve the



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11 intent of the Legislature relating to human trafficking
12 expressed in s. 787.06(1)(d), it is necessary to provide a civil
13 cause of action for the recovery of compensatory and punitive
14 damages and costs.

15 (2) DEFINITIONS.—As used in this section, the term:

16 (a) "Facilitator" means a person who knowingly, or in
17 willful blindness, assists or provides goods or services to a
18 trafficker which assist or enable the trafficker to carry out
19 human trafficking. The term does not include a person who
20 facilitates human trafficking as a result of force, threat, or
21 coercion.

22 (b) "Human trafficking" has the same meaning as provided in
23 s. 787.06.

24 (c) "Trafficker" means any person who knowingly engages in
25 human trafficking, attempts to engage in human trafficking, or
26 benefits financially by receiving anything of value from
27 participation in a venture that has subjected a person to human
28 trafficking.

29 (d) "Trust fund" means the Trust Fund for Victims of Human
30 Trafficking and Prevention created in s. 787.0611.

31 (e) "Venture" means any group of two or more individuals
32 associated in fact, whether or not a legal entity.

33 (f) "Victim of human trafficking" means a person subjected
34 to coercion, as defined in s. 787.06, or by any other means, for
35 the purpose of being used in human trafficking; a child under 18
36 years of age subjected to human trafficking; or an individual
37 subjected to human trafficking as defined by federal law.

38 (g) "Willful blindness" exists when a person has knowledge
39 of information that would raise suspicions in a reasonable



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40 person and he or she deliberately refrains from obtaining
41 confirmation of or acting on the information because he or she
42 wants to remain in ignorance, such that knowledge of the facts
43 avoided can reasonably and fairly be imputed to the person who
44 avoided confirming it.

45 (3) CIVIL CAUSE OF ACTION.—

46 (a) A victim of human trafficking has a civil cause of
47 action against the trafficker or facilitator who victimized her
48 or him and may recover damages as provided in this section.

49 (b) The action may be brought in any court of competent
50 jurisdiction, and the standard of proof is a preponderance of
51 the evidence.

52 (c) A victim who prevails in any such action is entitled to
53 recover economic and noneconomic damages, penalties, punitive
54 damages, reasonable attorney fees, reasonable investigative
55 expenses, and costs.

56 1. Economic damages include, but are not limited to, past
57 and future medical and mental health expenses; repatriation
58 expenses, when a victim elects repatriation; and all other
59 reasonable costs and expenses incurred by the victim in the past
60 or estimated to be incurred by the victim in the future as a
61 result of the human trafficking.

62 2. Noneconomic damages are nonfinancial losses that would
63 not have occurred but for the victimization, and include pain
64 and suffering, inconvenience, physical impairment, mental
65 anguish, disfigurement, loss of capacity for enjoyment of life,
66 and other nonfinancial losses.

67 (d) The remedies provided in this section are in addition
68 to and cumulative with other legal and administrative remedies



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69 available to victims of human trafficking, except that a victim
70 may not recover under both this section and s. 772.104(2). If a
71 parent or legal guardian knowingly or through willful blindness
72 trafficked the victim, facilitated such trafficking, or
73 otherwise participated in the human trafficking of the victim,
74 such parent or legal guardian is not entitled to damages or
75 distributions under this section.

76 (e) If a victim prevails in an action under this section,
77 in addition to any other award imposed, the court shall assess a
78 civil penalty against the defendant in the amount of \$50,000.
79 This penalty is in addition to and not in lieu of any other
80 damage award. The civil penalty must be assessed by the court
81 and may not be disclosed to the jury. Proceeds from this civil
82 penalty shall be deposited into the trust fund.

83 (f) If one or more law enforcement agencies rescued the
84 victim or located the property where the abuse or exploitation
85 of a victim or victims occurred, the court must impose a civil
86 penalty against the defendant in the amount of \$50,000 and award
87 the penalty to the law enforcement agencies to fund future
88 efforts to combat human trafficking. The court must equitably
89 distribute this civil penalty among the law enforcement
90 agencies.

91 (g) The court shall have specific authority to consolidate
92 civil actions for the same trafficker or facilitator for the
93 purpose of case resolution and aggregate jurisdiction.

94 (h) Notwithstanding any other law to the contrary, the
95 amount of punitive damages awarded under this section shall be
96 equally divided between the victim and the trust fund.

97 (4) STATUTE OF LIMITATIONS.—The statute of limitations as



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98 specified in ss. 95.11(7) and 95.11(9) is applicable to actions
99 brought under this section.

100 (5) AFFIRMATIVE DEFENSE.—In any action brought under this
101 section against the owner or operator of a public lodging
102 establishment based on a claim of vicarious liability, it is an
103 affirmative defense to damages recoverable under such claim if
104 the owner or operator proves by the preponderance of evidence
105 that:

106 (a) It required management employees and employees of the
107 establishment reasonably expected to routinely interact with
108 guests to complete an educational program designed to
109 effectively train such employees in the identification,
110 prevention, and reporting of suspected human trafficking within
111 30 days after hiring or by January 1, 2019, whichever occurs
112 later;

113 (b) It had in place an effective employee protocol or
114 employee code of conduct to prevent, detect, and report
115 suspected human trafficking; and

116 (c) Any employee alleged in the action to have been
117 facilitators of, or otherwise participants in, human
118 trafficking, complied with the recommendations and practices
119 suggested or required in the training, protocols, or policies
120 required in this subsection.

121 Section 3. Subsection (4) is added to section 772.104,
122 Florida Statutes, to read:

123 772.104 Civil cause of action.—

124 (4) This section does not apply to a cause of action that
125 may be brought under s. 787.061.

126 Section 4. Subsections (7) and (9) of section 95.11,



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127 Florida Statutes, are amended to read:

128 95.11 Limitations other than for the recovery of real
129 property.—Actions other than for recovery of real property shall
130 be commenced as follows:

131 (7) FOR INTENTIONAL TORTS BASED ON ABUSE.—An action founded
132 on alleged abuse, as defined in s. 39.01, s. 415.102, or s.
133 984.03, ~~or~~ incest, as defined in s. 826.04, or human
134 trafficking, as defined in s. 787.06, may be commenced at any
135 time within 7 years after the age of majority, or within 4 years
136 after the injured person leaves the dependency of the abuser, or
137 within 4 years from the time of discovery by the injured party
138 of both the injury and the causal relationship between the
139 injury and the abuse, whichever occurs later.

140 (9) SEXUAL BATTERY OFFENSES ON VICTIMS UNDER AGE 16.—An
141 action related to an act constituting a violation of s. 794.011
142 or brought pursuant to s. 787.061 involving a victim who was
143 under the age of 16 at the time of the act may be commenced at
144 any time. This subsection applies to any such action other than
145 one which would have been time barred on or before July 1, 2010.

146 Section 5. This act shall take effect October 1, 2018.

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148 ===== T I T L E A M E N D M E N T =====

149 And the title is amended as follows:

150 Delete everything before the enacting clause
151 and insert:

152 A bill to be entitled
153 An act relating to victims of human trafficking;
154 providing a short title; creating s. 787.061, F.S.;
155 providing legislative findings; defining terms;



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156 providing a civil cause of action for victims of human
157 trafficking against a trafficker or facilitator;
158 providing procedures and requirements for bringing a
159 claim; providing for damages, penalties, punitive
160 damages, attorney fees, expenses, and costs; requiring
161 a court to impose civil penalties in certain
162 circumstances; providing for the deposit or
163 distribution of civil penalties; requiring the equal
164 distribution of punitive damages between victims and
165 the trust fund; providing that such actions are
166 subject to specified statute of limitations; providing
167 an affirmative defense for owners or operators of
168 public lodging establishments under certain
169 circumstances; amending s. 772.104, F.S.; specifying
170 that certain provisions concerning civil actions for
171 criminal practices do not apply to actions that may be
172 brought under s. 787.061, F.S.; amending s. 95.11,
173 F.S.; conforming provisions to changes made by the
174 act; providing an effective date.