

By Senator Book

32-01237-18

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1                   A bill to be entitled  
2           An act relating to victims of human trafficking;  
3           providing a short title; creating s. 787.061, F.S.;  
4           providing legislative findings; providing definitions;  
5           providing a civil cause of action for victims of human  
6           trafficking against a trafficker or facilitator;  
7           providing procedures and requirements for bringing a  
8           claim; providing for damages, punitive damages, and  
9           costs; requiring a court to impose civil penalties in  
10          certain circumstances; providing for distribution of  
11          civil penalties; providing for the distribution of  
12          punitive damages; providing that such actions are not  
13          subject to a statute of limitations; providing an  
14          affirmative defense for public lodging establishments  
15          under certain circumstances; amending s. 772.104,  
16          F.S.; specifying that certain provisions concerning  
17          civil actions for criminal practices do not apply to  
18          actions that may be brought under s. 787.061, F.S.;  
19          providing an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

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23           Section 1. This act may be cited as the "Civil Action for  
24 Victims of Human Trafficking and Prevention of Human Trafficking  
25 Act."

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

28           787.061 Civil actions by victims of human trafficking.—  
29           (1) FINDINGS.—The Legislature finds that, to achieve the

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30 goals of the state relating to human trafficking in s.  
31 787.06(1)(d), it is necessary to provide a civil cause of action  
32 for the recovery of compensatory and punitive damages and costs.

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

34 (a) "Facilitator" means a person who knowingly, or in  
35 willful blindness, assists or provides goods or services to a  
36 trafficker which assist or enable the trafficker to carry out  
37 human trafficking. The term does not include a person who  
38 facilitates human trafficking as a result of force, threat, or  
39 coercion.

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

42 (c) "Trafficker" means any person who knowingly engages in  
43 human trafficking, attempts to engage in human trafficking, or  
44 benefits financially by receiving anything of value from  
45 participation in a venture that has subjected a person to human  
46 trafficking.

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

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

51 (f) "Victim of human trafficking" means a person subjected  
52 to coercion, as defined in s. 787.06, for the purpose of being  
53 used in human trafficking, a child under 18 years of age  
54 subjected to human trafficking, or an individual subjected to  
55 human trafficking as defined by federal law.

56 (g) "Willful blindness" exists when a person has knowledge  
57 of information that would raise suspicions in a reasonable  
58 person and he or she deliberately refrains from obtaining

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59 confirmation of or acting on the information because he or she  
60 wants to remain in ignorance, such that knowledge of the facts  
61 avoided can reasonably and fairly be imputed to the person who  
62 avoided confirming it.

63 (3) CIVIL CAUSE OF ACTION.—

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

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

70 (c) A victim who prevails in any such action is entitled to  
71 recover economic and noneconomic damages, penalties, punitive  
72 damages, reasonable attorney fees, reasonable investigative  
73 expenses, and costs.

74 1. The measure of economic damages for services or labor  
75 coerced from the victim of human trafficking is the greater of  
76 the fair market value of the labor or services provided or the  
77 amount realized by the trafficker. For purposes of this  
78 subparagraph, the terms "services" and "labor" have the same  
79 meanings as provided in s. 787.06.

80 2. The measure of economic damages for every day that the  
81 human trafficking was ongoing shall be calculated as a daily  
82 amount of the compensation payable to a person under s.  
83 961.06(1)(a).

84 3. Economic damages also include past and future medical  
85 and mental health expenses; repatriation expenses, when a victim  
86 elects repatriation; and all other reasonable costs and expenses  
87 incurred by the victim in the past or estimated to be incurred

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88 by the victim in the future as a result of the human  
89 trafficking.

90 4. Noneconomic damages are nonfinancial losses that would  
91 not have occurred but for the victimization, and include pain  
92 and suffering, inconvenience, physical impairment, mental  
93 anguish, disfigurement, loss of capacity for enjoyment of life,  
94 and other nonfinancial losses.

95 (d) The remedies provided in this section are in addition  
96 to and cumulative with other legal and administrative remedies  
97 available to victims of human trafficking, except that a victim  
98 may not recover under both this section and s. 772.104(2). If a  
99 parent or legal guardian knowingly or through willful blindness  
100 trafficked the victim, facilitated such trafficking, or  
101 otherwise participated in the human trafficking of the victim,  
102 such parent or legal guardian is not entitled to damages or  
103 distributions under this section.

104 (e) If a victim prevails in an action under this section,  
105 in addition to any other award imposed, the court shall assess a  
106 civil penalty against the defendant in the amount of \$100,000.  
107 This penalty is in addition to and not in lieu of any other  
108 damage award. The civil penalty must be assessed by the court  
109 and may not be disclosed to the jury. Proceeds from this civil  
110 penalty shall be deposited into the trust fund.

111 (f) If one or more law enforcement agencies rescued the  
112 victim or located the property where the abuse or exploitation  
113 of a victim or victims occurred, the court must impose a civil  
114 penalty against the defendant in the amount of \$50,000 and award  
115 the penalty to the law enforcement agencies to fund future  
116 efforts to combat human trafficking. The court must equitably

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117 distribute this civil penalty among the law enforcement  
118 agencies.

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

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

125 (4) STATUTE OF LIMITATIONS.—There is no statute of  
126 limitations for actions brought under this section.

127 (5) AFFIRMATIVE DEFENSE.—In any action brought under this  
128 section against the owner or operator of a public lodging  
129 establishment based on a claim of vicarious liability, it is an  
130 affirmative defense against such claim if the owner or operator  
131 proves by a preponderance of evidence that it:

132 (a) Required employees of the establishment reasonably  
133 expected to routinely interact with guests to complete an  
134 educational program designed to effectively train such employees  
135 in the identification and reporting of suspected human  
136 trafficking within 30 days of hiring or by July 1, 2019,  
137 whichever occurs later;

138 (b) Had in place an employee protocol or employee code of  
139 conduct to detect and report suspected human trafficking; and

140 (c) Took reasonable steps, before the first incident giving  
141 rise to such action, to ensure that any employees alleged in the  
142 action to have been facilitators of, or otherwise participants  
143 in, human trafficking, complied with the recommendations and  
144 practices suggested or required in the training, protocols, or  
145 policies required in this subsection.

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

148 772.104 Civil cause of action.—

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

151 Section 4. This act shall take effect July 1, 2018.