

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Spano offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

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

10 787.061 Civil actions by victims of human trafficking.-

11 (1) FINDINGS.-The Legislature finds that, to achieve the
 12 intent of the Legislature relating to human trafficking
 13 expressed in s. 787.06(1)(d), it is necessary to provide a civil
 14 cause of action for the recovery of compensatory and punitive
 15 damages, attorney's fees, and costs.

16 (2) DEFINITIONS.-As used in this section, the term:

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

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

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

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

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

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

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

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

46 (3) CIVIL CAUSE OF ACTION.-

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

50 (b) The action may be brought in any court of competent
51 jurisdiction, and the standard of proof is greater weight of the
52 evidence, but the standard of proof for punitive damages under
53 this section is clear and convincing evidence.

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

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

64 2. Noneconomic damages are nonfinancial losses that would
65 not have occurred but for the victimization, and include pain
66 and suffering, inconvenience, physical impairment, mental

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67 anguish, disfigurement, loss of capacity for enjoyment of life,
68 and other nonfinancial losses.

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

78 (e) If a victim prevails in an action under this section,
79 in addition to any other award imposed, the court shall assess a
80 civil penalty against the defendant in the amount of \$50,000.
81 This penalty is in addition to and not in lieu of any other
82 damage award. The civil penalty must be assessed by the court
83 and may not be disclosed to the jury. The entire \$50,000 civil
84 penalty shall be deposited into the trust fund unless the
85 proceeds become subject to equitable distribution under
86 paragraph (g).

87 (f) If a victim prevails in an action under this section,
88 and if one or more law enforcement agencies rescued the victim
89 or stopped the abuse or exploitation of a victim or victims on
90 the property where it occurred, the court must assess a civil
91 penalty against the defendant in the amount of \$50,000 and award

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92 the penalty to the law enforcement agencies to fund future
93 efforts to combat human trafficking. This penalty is in addition
94 to and not in lieu of any other damage award or civil penalty.
95 The court must equitably distribute this civil penalty among the
96 law enforcement agencies. The entire \$50,000 civil penalty shall
97 be distributed to the law enforcement agencies unless the
98 proceeds become subject to equitable distribution under
99 paragraph (g).

100 (g) If an action brought under this section is either
101 settled prior to a jury verdict or the victim is unable to
102 recover the full amount of the compensatory damages caused by
103 the human trafficking, the court must determine the percentage
104 of the victim's damages that were recovered, after deducting a
105 victim's reasonable and necessary out-of-pocket expenses, but
106 before attorney's fees, and that same percentage of \$50,000 must
107 be paid from the recovery to the trust fund. If one or more law
108 enforcement agencies are entitled to a civil penalty under
109 paragraph (f), that same percentage of \$50,000 must be paid from
110 the recovery to the law enforcement agencies to fund future
111 efforts to combat human trafficking.

112 (h) The court shall have specific authority to consolidate
113 civil actions for the same trafficker or facilitator for the
114 purpose of case resolution and aggregate jurisdiction.

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115 (i) Notwithstanding any other law to the contrary, the
116 amount of punitive damages awarded under this section shall be
117 equally divided between the victim and the trust fund.

118 (4) STATUTE OF LIMITATIONS.—The statute of limitations as
119 specified in ss. 95.11(7) and 95.11(9) is applicable to actions
120 brought under this section.

121 (5) AFFIRMATIVE DEFENSE.—(a) In any action brought under
122 this section against the owner or operator of a public food
123 service or lodging establishment based on a claim of vicarious
124 liability for an employee's conduct, it is an affirmative
125 defense to punitive damages recoverable under such claim if the
126 owner or operator proves by greater weight of evidence that:

127 1. Its personnel have been trained to identify and report
128 suspected human trafficking activity in accordance with s.
129 509.210 and rules adopted thereunder.

130 2. The owner or operator had in place an employee protocol
131 or employee code of conduct to detect and report suspected human
132 trafficking activity to appropriate law enforcement authorities,
133 which may include the National Human Trafficking Hotline, the
134 U.S. Department of Justice Hotline, the Florida Abuse Hotline,
135 or local law enforcement authorities.

136 3. If the victim of human trafficking was a minor at the
137 time of the trafficking, the owner or operator exercised
138 reasonable care and diligence, commensurate with screening,
139 training, overseeing, and supervising the employee, and made a

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140 reasonable attempt to ensure compliance with the anti-human
141 trafficking protocols and training required by this section.

142 (b) If the victim of human trafficking was an adult at the
143 time of the trafficking, the affirmative defense provided in
144 this subsection may be overcome with proof by clear and
145 convincing evidence that the officers, directors, or managers of
146 the owner or operator of the public food service or lodging
147 establishment knowingly, or in willful blindness, condoned,
148 ratified, permitted, caused, or consented to the conduct
149 constituting human trafficking or the facilitation of such
150 trafficking.

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

153 772.104 Civil cause of action.—

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

156 Section 4. Section 509.210, Florida Statutes, is created
157 to read:

158 509.210 Training of public food service and lodging
159 establishment personnel regarding human trafficking.—

160 (1) In consultation with the Attorney General, human
161 trafficking victim advocacy organizations and state and national
162 restaurant and lodging associations, the division shall adopt by
163 rule one or more educational programs designed to train
164 employees of public food service and lodging establishments in

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165 the identification and reporting of suspected human trafficking
166 activity. The owner or operator of a public food service or
167 lodging establishment may also adopt its own educational program
168 for this purpose, which must be submitted to the division and
169 approved for the owner's or operator's use. The division will
170 approve such a program for the use of the owner or operator and
171 its affiliated establishments if it is determined to be at least
172 as comprehensive and effective as the other programs adopted by
173 the division by rule. The rule will require the owner or
174 operator of each public food service or lodging establishment to
175 train those classes of employee reasonably expected to routinely
176 interact with guests, using an approved educational program,
177 within a reasonable period of time after hiring, and at
178 appropriate intervals thereafter, and to maintain documentation
179 of such training for routine inspection. If the owner or
180 operator fails to comply with the rule's requirements, the
181 division shall impose administrative sanctions pursuant to s.
182 509.261.

183 (2) All public food service and lodging establishments must
184 provide the division with proof of employee training upon
185 request, including, but not limited to, at the time of any
186 division inspection of the establishment. Proof of training for
187 each employee shall include the name, date of birth, and job
188 title of the trained employee; the date the training occurred;
189 and the approved educational program used.

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190 (3) The division may adopt emergency rules pursuant to s.
191 120.54 to implement this section. The Legislature finds
192 emergency rulemaking power necessary for the preservation of the
193 rights and welfare of the people of Florida and to address the
194 scourge of human trafficking in our state. The adoption of
195 emergency rules pursuant to this subsection is exempt from s.
196 120.54(4)(a).

197 Section 5. Subsections (7) and (9) of section 95.11,
198 Florida Statutes, are amended to read:

199 95.11 Limitations other than for the recovery of real
200 property.—Actions other than for recovery of real property shall
201 be commenced as follows:

202 (7) FOR INTENTIONAL TORTS BASED ON ABUSE.—An action
203 founded on alleged abuse, as defined in s. 39.01, s. 415.102, or
204 s. 984.03, ~~or~~ incest, as defined in s. 826.04, or human
205 trafficking, as defined in s. 787.06, may be commenced at any
206 time within 7 years after the age of majority, or within 4 years
207 after the injured person leaves the dependency of the abuser, or
208 within 4 years from the time of discovery by the injured party
209 of both the injury and the causal relationship between the
210 injury and the abuse, whichever occurs later.

211 (9) SEXUAL BATTERY OFFENSES ON VICTIMS UNDER AGE 16.—An
212 action related to an act constituting a violation of s. 794.011
213 or brought pursuant to s. 787.061 involving a victim who was
214 under the age of 16 at the time of the act may be commenced at

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215 any time. This subsection applies to any such action other than
216 one which would have been time barred on or before July 1, 2010.

217 Section 6. This act shall take effect October 1, 2018.

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

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Remove everything before the enacting clause and insert:

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An act relating to victims of human trafficking; providing a

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short title; creating s. 787.061, F.S.; providing legislative

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findings; defining terms; providing a civil cause of action for

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victims of human trafficking against a trafficker or

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facilitator; providing procedures and requirements for bringing

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a claim; providing for damages, penalties, punitive damages,

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attorney fees, expenses, and costs; requiring a court to impose

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civil penalties in certain circumstances; providing for the

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deposit or distribution of civil penalties; requiring the equal

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distribution of punitive damages between victims and the trust

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fund; providing that such actions are subject to specified

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statute of limitations; providing an affirmative defense for

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owners or operators of public lodging establishments under

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certain circumstances; amending s. 772.104, F.S.; specifying

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that certain provisions concerning civil actions for criminal

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practices do not apply to actions that may be brought under s.

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787.061, F.S.; creating s. 509.210, F.S.; requiring educational

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programs for employees of public food service and lodging

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240 establishment regarding human trafficking; providing proof of
241 compliance requirements for establishments; providing rulemaking
242 authority and an exemption for the Division of Hotels and
243 Restaurants; amending s. 95.11, F.S.; conforming provisions to
244 changes made by the act; providing an effective date.

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