

1 A bill to be entitled
2 An act relating to victims of human trafficking;
3 creating s. 787.061, F.S.; providing a short title;
4 providing legislative findings and intent; providing
5 definitions; providing a civil cause of action by
6 victims of human trafficking or the Florida
7 Compensation Trust Fund for Survivors of Human
8 Trafficking against certain persons; providing for
9 damages, attorney fees, and costs; providing for civil
10 penalties; providing for civil forfeitures; providing
11 procedures for forfeiture actions; providing for a
12 closed hearing in certain circumstances; providing
13 that actions have no statute of limitations; creating
14 s. 796.095, F.S.; providing a cause of action against
15 entities carrying advertising that facilitates
16 victimization of certain persons through human
17 trafficking; providing definitions; providing immunity
18 for plaintiffs in such actions for certain evidence
19 presented; prohibiting specified defenses to such
20 actions; providing that certain evidence is
21 inadmissible in such actions; providing for award of
22 treble damages, minimum damages, attorney fees, and
23 costs; providing a directive to the Division of Law
24 Revision and Information; providing effective dates.
25

26 Be It Enacted by the Legislature of the State of Florida:

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 28 Section 1. Effective upon this act becoming law, section
 29 787.061, Florida Statutes, is created to read:

30 787.061 Human trafficking; civil action.-

31 (1) SHORT TITLE.-This section may be known as the "Civil
 32 Action Against Human Trafficking Compensation Fund Act."

33 (2) FINDINGS.-The legislature finds that to achieve the
 34 goals relating to human trafficking set forth in s.787.06(1)(d),
 35 it is necessary to provide a civil cause of action for the
 36 recovery of compensatory and punitive damages and for the civil
 37 seizure and forfeiture of the personal and real property used by
 38 those who engage in the human trafficking of minors for sex or
 39 labor and those who either knowingly or through willful
 40 blindness receive profit from or otherwise receive direct or
 41 indirect economic benefits from such trafficking.

42 (3) LEGISLATIVE INTENT-In order to combat the practice of
 43 human trafficking, it is the intent of the legislature to create
 44 a civil cause of action for the victims of human trafficking and
 45 to establish the Florida Compensation Trust Fund for Survivors
 46 of Human Trafficking.

47 (4) DEFINITIONS-As used in this section, the term:

48 (a) "Claimant" means any party who has proprietary
 49 interest in property subject to forfeiture under this section
 50 and has standing to challenge such forfeiture, including owners,

51 registered owners, bona fide lienholders, and titleholders.

52 (b) "Facilitate" or "facilitator" means assisting or
53 providing services to a human trafficker that assist or enable
54 the trafficker to carry out human trafficking activity or one
55 who provides such assistance or provides such services.

56 (c) "Forfeiture proceeding" means a hearing or trial in
57 which the court or jury determines whether the subject property
58 shall be forfeited.

59 (d) "Fund" refers to the Florida Compensation Trust Fund
60 for Survivors of Human Trafficking created in s. 787.0611.

61 (e) "Human trafficking" has the same meaning as provided
62 in section s. 787.06(2).

63 (f) "Plaintiff" in a forfeiture proceeding brought under
64 this section means either a victim of human trafficking or the
65 fund.

66 (g) "Trafficker" or "human trafficker" means any person
67 who knowingly, or in willful blindness, engages in human
68 trafficking of a minor, attempts to engage in human trafficking
69 of a minor, or benefits financially by receiving anything of
70 value from participation in a venture that has subjected a minor
71 person to human trafficking.

72 (h) "Willful blindness" occurs when a person has her or
73 his suspicion aroused about a particular fact, and realizes its
74 probability, but deliberately refrains from obtaining
75 confirmation of it or acting on it because she or he wants to

76 remain in ignorance, such that knowledge of the fact avoided can
77 reasonably and fairly be imputed to the person who avoided
78 confirming it.

79 (5) CIVIL CAUSE OF ACTION.—

80 (a) A minor victim of human trafficking, or an adult who
81 was a minor at the time she or he was a victim of human
82 trafficking, has a civil cause of action against the trafficker
83 or facilitator of human trafficking who victimized her or him,
84 and may recover actual and punitive damages for such
85 victimization, and may seize and have forfeited the personal and
86 real property of the trafficker or facilitator used in such
87 trafficking.

88 1. A civil action may be brought by any minor who has been
89 the victim of human trafficking; by a minor victim and her or
90 his guardian; by an attorney acting on behalf of the minor with
91 the consent of the minor or her or his guardian; or by the
92 personal representative of the estate of the deceased minor
93 victim, regardless of the cause of death.

94 2. A civil action may be brought by the fund on behalf of
95 a minor. If a claim is brought by the fund, any damages
96 recovered on behalf of the victim must be distributed to the
97 victim or her or his guardian or estate, whichever the case may
98 be. If the victim cannot be located then the recovered damages
99 shall be retained by the fund. The fund has an obligation to
100 make a good faith attempt to locate the victim and, if the

101 victim cannot be located after such an effort, to distribute the
102 money in the same manner as if the victim had died intestate.

103 3. A civil action may be brought by an adult who has been
104 the victim of human trafficking, but only if the adult herself
105 or himself is the named plaintiff.

106 (b) An action may be brought under this section in any
107 court of competent jurisdiction to enforce such action and the
108 standard of proof shall be the preponderance of the evidence.

109 (c) A victim or the fund who prevails in any such action
110 shall be entitled to recover reasonable attorney fees,
111 reasonable investigative expenses, and the costs of the action,
112 economic and noneconomic damages, forfeited personal and real
113 property, and any other applicable civil penalties.

114 (d) The remedies provided in this section are in addition
115 to and cumulative with other legal and administrative remedies
116 available to victims of human trafficking.

117 (e) In the event a victim or the fund prevails in an
118 action under this section, in addition to any other award
119 imposed, the court shall award a civil penalty against the
120 defendant in the amount of \$100,000 and enter judgment thereon
121 in favor of the prevailing victim or the fund, whichever was the
122 prevailing party.

123 (f) In addition to the civil penalty in paragraph (e), if
124 a law enforcement agency rescued the victim or located the
125 property upon which the abuse or exploitation of a victim or

126 victims had occurred, the court shall impose a civil penalty
127 against the defendant in the civil action and in favor of the
128 law enforcement agency in the amount of \$50,000 for the benefit
129 of said law enforcement agency's future efforts to combat human
130 trafficking.

131 (g) Any person who knowingly or through willful blindness
132 allows their property to be used to facilitate human trafficking
133 shall be subject to civil forfeiture of the real or personal
134 property used in such facilitation. The civil forfeiture shall
135 be for the benefit of a victim or the fund, which ever was the
136 prevailing party.

137 (h) The civil forfeiture does not apply to valid and
138 lawful leases, recorded mortgages, or liens of innocent third
139 parties that were in existence prior to the earlier date of the
140 arrest of a trafficker or perpetrator and the filing of the
141 civil action.

142 (i) The victim or the fund shall be entitled to seize the
143 personal and real property of traffickers, perpetrators, and
144 facilitators upon proving its case by the greater weight of the
145 evidence. The victim or the fund does not have to prove an
146 actual amount of money damages suffered by any individual victim
147 or victims.

148 (6) CIVIL FORFEITURE PROCEEDINGS.—

149 (a) A victim of human trafficking or the fund may file a
150 civil judicial forfeiture action in the circuit courts of the

151 state seeking a judgment of forfeiture against an owner of real
152 or personal property that was knowingly or through willful
153 blindness used in the trafficking of the victim for sex or
154 labor.

155 (b) Civil forfeiture actions brought under this section
156 are exempt from the requirements of the Florida Contraband
157 Forfeiture Act, ss. 932.701-932.7062, and shall be governed as
158 provided in this section.

159 (c) All actions brought under this section shall be
160 governed by the Florida Rules of Civil Procedure.

161 (d) Any trial on the ultimate issue of forfeiture must be
162 decided by a jury, unless such right is waived by the claimant
163 through a written waiver or on the record before the court
164 conducting the forfeiture proceeding.

165 (e) The plaintiff in a forfeiture proceeding brought under
166 this section must proceed against property to be forfeited by
167 filing a complaint in the circuit court in the jurisdiction
168 where the seizure of the property or the offense occurred,
169 paying a filing fee of at least \$1,000 and depositing a bond of
170 \$1,500 to the clerk of the court. Unless otherwise expressly
171 agreed to in writing by the parties, the bond shall be payable
172 to the claimant if the claimant prevails in the forfeiture
173 proceeding and in any appeal.

174 (f) The complaint must be styled, "In RE: FORFEITURE OF "
175 (followed by the name or description of the property). The

176 complaint must contain a brief jurisdictional statement, a
177 description of the subject matter of the proceeding, and a
178 statement of the facts sufficient to state a cause of action
179 that would support a final judgment of forfeiture. The complaint
180 must be accompanied by a verified supporting affidavit.

181 (g) The court must require any claimant who desires to
182 contest the forfeiture to file and serve upon the plaintiff any
183 responsive pleadings and affirmative defenses within 20 days
184 after receipt of the complaint.

185 (h) If the property is required by law to be titled or
186 registered, or if the seized property is subject to a perfected
187 security interest in accordance with chapter 679, the Uniform
188 Commercial Code, the plaintiff shall serve the forfeiture
189 complaint as an original service of process under the Florida
190 Rules of Civil Procedure and other applicable law to each person
191 having an ownership or security interest in the property. The
192 plaintiff shall also publish, in accordance with chapter 50,
193 notice of the forfeiture complaint once each week for 2
194 consecutive weeks in a newspaper of general circulation, as
195 defined in s. 165.031, in the county where the property is
196 located.

197 (i) The complaint must describe the property to be
198 forfeited. If the property to be forfeited has been seized by a
199 law enforcement agency, the complaint must state the county,
200 place, and date of seizure; state the name of the law

201 enforcement agency holding the seized property; and state the
202 name of the court in which the complaint will be filed.

203 (j) The plaintiff must make a diligent search and inquiry
204 as to the owner of the subject property, and if, after such
205 diligent search and inquiry, the plaintiff is unable to
206 ascertain any person entitled to notice, the actual notice
207 requirements by mail shall not be applicable.

208 (k) Upon proof by the preponderance of the evidence that
209 the property to be forfeited was used in the trafficking of the
210 minor for sex or labor, the court must order the property
211 forfeited to the plaintiff. The final order of forfeiture by the
212 court shall perfect in the plaintiff right, title, and interest
213 in and to such property, subject only to the rights and
214 interests of bona fide lienholders, and, if applicable, shall
215 relate back to the date of seizure.

216 (l) If a claimant prevails at the conclusion of a
217 forfeiture proceeding involving property seized by law
218 enforcement and the plaintiff decides not to appeal, any seized
219 property must be released immediately to the person entitled to
220 possession of the property as determined by the court. Under
221 such circumstances, the seizing agency shall not assess any
222 towing charges, storage fees, administrative costs, or
223 maintenance costs against the claimant with respect to the
224 seized property or forfeiture proceeding.

225 (m) If a claimant prevails at the conclusion of a

226 forfeiture proceeding involving seized property, the trial court
227 must require the seizing agency to pay to the claimant the
228 reasonable loss of value of the seized property. If a claimant
229 prevails at trial or on appeal and the seizing agency retained
230 the seized property during the trial or appellate process, the
231 trial court shall also require the seizing agency to pay to the
232 claimant any loss of income directly attributed to the continued
233 seizure of income-producing property during the trial or
234 appellate process. If the claimant prevails on appeal, the
235 seizing agency shall immediately release the seized property to
236 the person entitled to possession of the property as determined
237 by the court, pay any cost as assessed by the court, and may not
238 assess any towing charges, storage fees, administrative costs,
239 or maintenance costs against the claimant with respect to the
240 seized property or the forfeiture proceeding.

241 (n) If the claimant prevails, at the close of forfeiture
242 proceedings and any appeal, the court shall award reasonable
243 trial attorney fees and costs to the claimant if the court finds
244 that the plaintiff has not proceeded in good faith. The court
245 may order the plaintiff to pay the awarded attorney fees and
246 costs from the Florida Compensation Trust Fund for Survivors of
247 Human Trafficking. This subsection does not preclude any party
248 from electing to seek attorney fees and costs under chapter 57
249 or other applicable law.

250 (7) CLOSED HEARINGS.—At the victim's request, court

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251 hearings conducted pursuant to this section shall be closed to
252 the public and any information identifying victims of human
253 trafficking redacted or sealed in the court file and online
254 docket for such action.

255 (8) STATUTE OF LIMITATIONS.—There shall be no statute of
256 limitations for suits brought pursuant to this section. This
257 subsection applies to any such action other than one which would
258 have been time barred on or before the effective date of this
259 act.

260 Section 2. Section 796.095, Florida Statutes, is created
261 to read:

262 796.095 Publishers of advertisements facilitating human
263 trafficking; civil actions.—

264 (1) (a) A person has a cause of action against the owner or
265 operator of a newspaper, magazine, website, or other
266 communications medium that carries advertisements or notices
267 that facilitate human trafficking of which the person is a
268 victim.

269 (b) Paragraph (a) applies if the owner or operator of a
270 newspaper, magazine, website, or other communications medium
271 that carried the advertisements or notices knew or had reason to
272 know that the advertisements or notices facilitated human
273 trafficking.

274 (2) As used in this section, the term:

275 (a) "Coercion" has the same meaning as provided in s.

276 796.09.

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

279 (3) In the course of litigation under this section, a
280 transaction about which a plaintiff testifies or produces
281 evidence does not subject the plaintiff to criminal prosecution
282 or any penalty or forfeiture. Further, any testimony or
283 evidence, documentary or otherwise, or information directly or
284 indirectly derived from such testimony or evidence which is
285 given or produced by a plaintiff or a witness for a plaintiff
286 may not be used against these persons in any other investigation
287 or proceeding. However, such testimony or evidence may be used
288 against a plaintiff or a witness for a plaintiff upon any
289 criminal investigation or proceeding for perjury committed while
290 giving such testimony or producing such evidence.

291 (4) It does not constitute a defense to a complaint under
292 this section that:

293 (a) The plaintiff is paid or otherwise compensated; or

294 (b) The plaintiff engaged in such prior acts before any
295 involvement with the defendant.

296 (5) Evidence of convictions for prostitution, as defined
297 in s. 796.07, or prostitution-related offenses, as described in
298 s. 796.07(2), are inadmissible in a proceeding brought under
299 this section for purposes of attacking the plaintiff's
300 credibility.

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301 (6) If the plaintiff prevails in an action under this
302 section, he or she shall be awarded the greater of three times
303 the actual damages sustained or \$10,000, plus reasonable
304 attorney fees and court costs.

305 Section 3. The Division of Law Revision and Information is
306 directed to replace the phrase "the effective date of this act"
307 wherever it occurs in s. 787.061, Florida Statutes, as created
308 by this act with the date the act becomes a law.

309 Section 4. Except as otherwise expressly provided in this
310 act, this act shall take effect July 1, 2017.