

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; providing definitions;
5 providing a civil cause of action by victims of human
6 trafficking or the Florida Compensation Trust Fund for
7 Survivors of Human Trafficking against certain
8 persons; providing for damages, attorney fees, and
9 costs; providing for civil penalties; providing for
10 civil forfeitures; providing procedures for forfeiture
11 actions; providing that actions have no statute of
12 limitations; amending s. 16.617, F.S.; adding
13 functions and duties for the Statewide Council on
14 Human Trafficking; providing for administration of the
15 Florida Compensation Trust Fund for Survivors of Human
16 Trafficking by the Statewide Council on Human
17 Trafficking; providing for initial funding for
18 implementation; providing an effective date.

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

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22 Section 1. Effective upon this act becoming law, section
23 787.061, Florida Statutes, is created to read:

24 787.061 Civil actions for human trafficking; civil
25 forfeiture.-

26 (1) SHORT TITLE.—This section may be known as the "Civil
 27 Action Against Human Trafficking Compensation Fund Act."

28 (2) FINDINGS.—The legislature finds that to achieve the
 29 state's goals relating to human trafficking set forth in s.
 30 787.06(1)(d), it is necessary to provide a civil cause of action
 31 for the recovery of compensatory and punitive damages and for
 32 the civil seizure and forfeiture of the personal and real
 33 property used by those who engage in the human trafficking of
 34 persons for sex or labor and those who either knowingly or
 35 through willful blindness receive profit from or otherwise
 36 receive direct or indirect economic benefits from such
 37 trafficking.

38 (3) DEFINITIONS—As used in this section, the term:

39 (a) "Claimant" means any party who has proprietary
 40 interest in property subject to forfeiture under this section
 41 and has standing to challenge such forfeiture.

42 (b) "Council" means the Statewide Council on Human
 43 Trafficking within the Department of Legal Affairs, as created
 44 by s. 16.617.

45 (c) "Facilitate" or "facilitator" means assisting or
 46 providing services to a human trafficker that assist or enable
 47 the trafficker to carry out human trafficking activity or one
 48 who provides such assistance or provides such services.

49 (d) "Forfeiture proceeding" means a hearing or trial in
 50 which the court or jury determines whether the subject property

51 shall be forfeited.

52 (e) "Fund" refers to the Florida Compensation Trust Fund
53 for Survivors of Human Trafficking created in s. 787.0611.

54 (f) "Human trafficking" has the same meaning as provided
55 in section s. 787.06(2).

56 (g) "Trafficker" or "human trafficker" means any person
57 who knowingly, or in willful blindness, engages in human
58 trafficking, attempts to engage in human trafficking, or
59 benefits financially by receiving anything of value from
60 participation in a venture that has subjected a person to human
61 trafficking.

62 (h) "Willful blindness" occurs when a person has her or
63 his suspicion aroused about a particular fact, and realizes its
64 probability, but deliberately refrains from obtaining
65 confirmation of it or acting on it because she or he wants to
66 remain in ignorance, such that knowledge of the fact avoided can
67 reasonably and fairly be imputed to the person who avoided
68 confirming it.

69 (4) CIVIL CAUSE OF ACTION.—

70 (a) A victim of human trafficking has a civil cause of
71 action against the trafficker or facilitator of human
72 trafficking who victimized her or him, and may recover damages
73 for such victimization as provided in this section.

74 (b) The council, on behalf of a victim of human
75 trafficking, has a civil cause of action against the trafficker

76 | or facilitator of human trafficking who victimized any person in
77 | the state, and may recover on behalf of the fund actual and
78 | punitive damages for such victimization. The council may sue
79 | generally on behalf of unknown and unnamed victims, and may sue
80 | on behalf of known and named victims, or both. Where the council
81 | proves damages to a specific individual who was subject to
82 | trafficking, the fund shall hold moneys for distribution to the
83 | victim or her or his guardian or estate, whichever the case may
84 | be. If the victim cannot be located then the recovered damages
85 | shall be retained by the fund. The council has an obligation to
86 | make a good faith attempt to locate the victim and, if the
87 | victim cannot be located after such an effort, to distribute the
88 | money in the same manner as if the victim had died intestate.
89 | Where multiple claims are entitled to payment from the same
90 | proceeds but those proceeds are inadequate to pay all claims in
91 | full, the council shall equitably apportion the funds among the
92 | claimants.

93 | (c) The action may be brought in any court of competent
94 | jurisdiction and the standard of proof shall be the
95 | preponderance of the evidence.

96 | (d) A victim, or the council on behalf of a victim, who
97 | prevails in any such action shall be entitled to recover
98 | economic and noneconomic damages, penalties, punitive damages,
99 | reasonable attorney fees, reasonable investigative expenses, and
100 | the costs of the action. The measure of economic damages for

101 lawful work forced from the victim of human trafficking shall be
102 the greater of the fair market value of services provided or the
103 amount realized by the trafficker. The measure of economic
104 damages for every day of captivity shall be the same as that
105 payable to a person entitled to damages under chapter 961.
106 Economic damages of a victim shall also include past and future
107 medical expenses, repatriation expenses where a victim elects
108 repatriation, and all other reasonable costs and expenses
109 incurred by the victim in the past or estimated to be incurred
110 by the victim in the future as a result of the trafficking.
111 Noneconomic damages shall be calculated as in a tort action.

112 (e) The remedies provided in this section are in addition
113 to and cumulative with other legal and administrative remedies
114 available to victims of human trafficking, except that a victim
115 may not recover under both this section and s. 772.104(2).

116 (f) In the event a victim or the council prevails in an
117 action under this section, in addition to any other award
118 imposed, the court shall award a civil penalty against the
119 defendant in the amount of \$100,000 and enter judgment thereon
120 in favor of the prevailing victim or the council, whichever was
121 the prevailing party. This penalty shall be in addition to, and
122 not in lieu of, any punitive damage award. The civil penalty
123 shall be assessed by the court and not disclosed to the jury.

124 (g) If a law enforcement agency rescued the victim or
125 located the property upon which the abuse or exploitation of a

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

131 (5) CIVIL FORFEITURE PROCEEDINGS.—

132 (a) The council may file a civil judicial forfeiture
133 action in the circuit courts of the state seeking a judgment of
134 forfeiture against an owner of real or personal property that
135 was knowingly or through willful blindness used in the
136 trafficking of the victim for sex or labor. The civil forfeiture
137 shall be for the benefit of a victim or the council.

138 (b) Valid and lawful leases, recorded mortgages, or liens
139 of innocent third parties that were in existence prior to the
140 date of the filing of the civil action are not subject to
141 forfeiture, nor is property owned by a good faith purchaser for
142 value.

143 (c) Civil forfeiture actions brought under this section
144 are exempt from the requirements of the Florida Contraband
145 Forfeiture Act, ss. 932.701-932.7062, and shall be governed as
146 provided in this section.

147 (d) If a law enforcement agency of the state or any other
148 party, pursuant to the Florida Contraband Forfeiture Act or as
149 otherwise provided for by law, seeks the forfeiture of the same
150 property as the council, the council's claim shall take priority

151 over the law enforcement agency.

152 (e) The council in a forfeiture proceeding brought under
153 this section must proceed against property to be forfeited by
154 filing a complaint in the circuit court in the jurisdiction
155 where the seizure of the property or the offense occurred,
156 paying a filing fee of \$1,000 and depositing a bond of \$1,500 to
157 the clerk of the court. Unless otherwise expressly agreed to in
158 writing by the parties, the bond shall be payable to the
159 claimant if the claimant prevails in the forfeiture proceeding
160 and in any appeal.

161 (f) The complaint must be styled, "In RE: FORFEITURE OF "
162 (followed by the name or description of the property). The
163 complaint must contain a brief jurisdictional statement, a
164 description of the subject matter of the proceeding, and a
165 statement of the facts sufficient to state a cause of action
166 that would support a final judgment of forfeiture. The complaint
167 must be accompanied by a verified supporting affidavit.

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

172 (h) If the property is required by law to be titled or
173 registered, or if the seized property is subject to a perfected
174 security interest in accordance with chapter 679, the Uniform
175 Commercial Code, the council shall serve the forfeiture

176 complaint as an original service of process under the Florida
177 Rules of Civil Procedure and other applicable law to each person
178 having an ownership or security interest in the property. The
179 council shall also publish, in accordance with chapter 50,
180 notice of the forfeiture complaint once each week for 2
181 consecutive weeks in a newspaper of general circulation, as
182 defined in s. 165.031, in the county where the property is
183 located.

184 (i) The complaint must describe the property to be
185 forfeited. If the property to be forfeited has been seized by a
186 law enforcement agency, the complaint must state the county,
187 place, and date of seizure; state the name of the law
188 enforcement agency holding the seized property; and state the
189 name of the court in which the complaint will be filed.

190 (j) The council must make a diligent search and inquiry as
191 to the owner of the subject property, and if, after such
192 diligent search and inquiry, the council is unable to ascertain
193 any person entitled to notice, the actual notice requirements by
194 mail shall not be applicable.

195 (k) Upon proof by the preponderance of the evidence that
196 the property to be forfeited was used in the trafficking of a
197 person for sex or labor, the court must order the property
198 forfeited to the council. The final order of forfeiture by the
199 court shall perfect in the council right, title, and interest in
200 and to such property, subject only to the rights and interests

201 of bona fide lienholders, and, if applicable, shall relate back
202 to the date of seizure or the filing of a lis pendens.

203 (1) Following an order of forfeiture to the council,
204 subject only to the rights and interests of bona fide
205 lienholders, the property or the proceeds from the sale of such
206 forfeited property shall be transferred to the victim of human
207 trafficking who the property was used in the course of such
208 trafficking up to the extent of her or his individual judgment
209 against the trafficker. In the event multiple victims were
210 subjected to human trafficking and for whom the property was
211 used in the course of such trafficking, the transfer of property
212 or proceeds from sale shall be made on a pro rata share basis.
213 If there are excess or unclaimed proceeds, the council shall
214 deposit the proceeds from sale of such property to fund for the
215 purpose of covering the expenses of the fund, the benefit of
216 other victims of human trafficking, and for the benefit of
217 combating human trafficking.

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

226 seized property or forfeiture proceeding.

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

243 (o) If the claimant prevails, at the close of forfeiture
244 proceedings and any appeal, the court shall award reasonable
245 trial attorney fees and costs to the claimant if the court finds
246 that the council has not proceeded in good faith. The court may
247 order the council to pay the awarded attorney fees and costs
248 from the fund. This subsection does not preclude any party from
249 electing to seek attorney fees and costs under chapter 57 or
250 other applicable law.

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

256 Section 2. Paragraph (f) is added to subsection (4) of
257 section 16.617, Florida Statutes, to read:

258 16.617 Statewide Council on Human Trafficking; creation;
259 membership; duties.—

260 (4) DUTIES.—The council shall:

261 (f) Perform the functions and duties as provided in ss.
262 787.061 and 787.0611, and administer the Florida Compensation
263 Trust Fund for Survivors of Human Trafficking, created by s.
264 787.0611.

265 Section 3. For the 2017-2018 fiscal year, the sums of
266 \$153,000 in recurring funds and \$29,000 in nonrecurring funds
267 from the Crimes Compensation Trust Fund are appropriated to the
268 Department of Legal Affairs, and 3 full-time equivalent
269 positions are authorized, for the purpose of implementing this
270 act.

271 Section 4. This act shall take effect July 1, 2017.