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LEGISLATIVE ACTION

Senate

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House

Floor: 1/00/3R

03/09/2018 07:48 PM

Senator Book moved the following:

Senate Amendment (with title amendment)

Between lines 205 and 206

insert:

Section 3. 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 intent of the Legislature relating to human trafficking expressed in s. 787.06(1)(d), it is necessary to provide a civil cause of action for the recovery of compensatory and punitive



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12 damages, attorney fees, and costs.

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

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

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

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

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

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

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

36 (g) "Willful blindness" exists when a person has knowledge
37 of information that would raise suspicions in a reasonable
38 person and he or she deliberately refrains from obtaining
39 confirmation of or acting on the information because he or she
40 wants to remain in ignorance, such that knowledge of the facts



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41 avoided can reasonably and fairly be imputed to the person who
42 avoided confirming it.

43 (3) CIVIL CAUSE OF ACTION.—

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

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

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

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

61 2. Noneconomic damages include pain and suffering,
62 inconvenience, physical impairment, mental anguish,
63 disfigurement, loss of capacity for enjoyment of life, and other
64 nonfinancial losses.

65 (d) The remedies provided in this section are in addition
66 to and cumulative with other legal and administrative remedies
67 available to victims of human trafficking, except that a victim
68 may not recover under both this section and s. 772.104(2). If a
69 parent or legal guardian knowingly or through willful blindness



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70 trafficked the victim, facilitated such trafficking, or
71 otherwise participated in the human trafficking of the victim,
72 such parent or legal guardian is not entitled to damages or
73 distributions under this section.

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

83 (f) If a victim prevails in an action under this section,
84 and if one or more law enforcement agencies rescued the victim
85 or stopped the abuse or exploitation of a victim on the property
86 where it occurred, the court shall assess a civil penalty
87 against the defendant in the amount of \$50,000 and award the
88 penalty to such law enforcement agencies to fund future efforts
89 to combat human trafficking. This penalty is in addition to, and
90 not in lieu of, any other damage award or civil penalty. The
91 court shall equitably distribute this civil penalty among the
92 law enforcement agencies. The entire \$50,000 civil penalty shall
93 be distributed to the law enforcement agencies unless the
94 proceeds become subject to equitable distribution under
95 paragraph (g).

96 (g) If an action brought under this section is either
97 settled prior to a jury verdict or the victim is unable to
98 recover the full amount of the compensatory damages caused by



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99 the human trafficking, the court must determine the percentage
100 of the victim's damages that were recovered, after deducting the
101 victim's reasonable and necessary out-of-pocket expenses, but
102 before deducting attorney fees, and that same percentage of
103 \$50,000 shall be paid from the recovery to the trust fund. If
104 one or more law enforcement agencies are entitled to a civil
105 penalty under paragraph (f), that same percentage of \$50,000
106 shall be paid from the recovery to the law enforcement agencies
107 to fund future efforts to combat human trafficking.

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

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

114 (j) Moneys collected from penalties, damages, or other
115 costs imposed by this section which are to be deposited into the
116 trust fund shall be remitted to the Department of Revenue for
117 deposit into the Department of Law Enforcement Trust Fund for
118 Victims of Human Trafficking and Prevention.

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

122 (5) AFFIRMATIVE DEFENSE.—

123 (a) In any action brought under this section against the
124 owner or operator of a public food service or lodging
125 establishment based on a claim of vicarious liability for an
126 employee's conduct, it is an affirmative defense to punitive
127 damages recoverable under such claim if the owner or operator



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128 proves by the greater weight of evidence that:

129 1. Its personnel have been trained to identify and report
130 suspected human trafficking activity in accordance with s.
131 509.210 and rules adopted thereunder.

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

138 3. If the victim of human trafficking was a minor at the
139 time of the trafficking, the owner or operator exercised
140 reasonable care and diligence in screening, training,
141 overseeing, and supervising the employee, and made a reasonable
142 attempt to ensure compliance with the anti-human trafficking
143 protocols and training required by this section.

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

153 Section 4. Section 509.210, Florida Statutes, is created to
154 read:

155 509.210 Training of public food service and lodging
156 establishment personnel regarding human trafficking.-



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157 (1) In consultation with the Attorney General, human
158 trafficking victim advocacy organizations, and state and
159 national restaurant and lodging associations, the division shall
160 adopt by rule one or more educational programs designed to train
161 employees of public food service and lodging establishments in
162 the identification and reporting of suspected human trafficking
163 activity. The owner or operator of a public food service or
164 lodging establishment may also adopt its own educational program
165 for this purpose, which must be submitted to the division and
166 approved by it for the owner's or operator's use. The division
167 must approve such a program for use by the owner or operator and
168 its affiliated establishments if it is determined to be at least
169 as comprehensive and effective as the other programs adopted by
170 the division by rule. The division rule must require the owner
171 or operator of each public food service or lodging establishment
172 to train those classes of employee reasonably expected to
173 routinely interact with guests, using an approved educational
174 program, within a reasonable time after hiring, and at
175 appropriate intervals thereafter, and to maintain documentation
176 of such training for routine inspection. If the owner or
177 operator fails to comply with the rule's requirements, the
178 division shall impose administrative sanctions pursuant to s.
179 509.261.

180 (2) All public food service and lodging establishments
181 shall provide the division with proof of employee training upon
182 request, including, but not limited to, at the time of any
183 division inspection of the establishment. Proof of training for
184 each employee shall include the name, date of birth, and job
185 title of the trained employee, the date the training occurred,



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186 and the approved educational program used.

187 Section 5. The Division of Hotels and Restaurants of the
188 Department of Business and Professional Regulation may adopt
189 emergency rules pursuant to s. 120.54, Florida Statutes, to
190 implement s. 509.210, Florida Statutes, as created by this act.
191 The Legislature finds emergency rulemaking power necessary for
192 the preservation of the rights and welfare of the people of
193 Florida and to address the scourge of human trafficking in our
194 state. The adoption of emergency rules pursuant to this section
195 is exempt from s. 120.54(4) (a), Florida Statutes.

196 Section 6. Subsection (4) is added to section 772.104,
197 Florida Statutes, to read:

198 772.104 Civil cause of action.—

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

201 Section 7. Subsections (7) and (9) of section 95.11,
202 Florida Statutes, are amended to read:

203 95.11 Limitations other than for the recovery of real
204 property.—Actions other than for recovery of real property shall
205 be commenced as follows:

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



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

221
222 ===== T I T L E A M E N D M E N T =====

223 And the title is amended as follows:

224 Delete line 14

225 and insert:

226 prison sentence; creating s. 787.061, F.S.; providing
227 legislative findings; defining terms; providing a
228 civil cause of action for victims of human trafficking
229 against a trafficker or facilitator; providing
230 procedures and requirements for bringing a claim;
231 providing for damages, penalties, punitive damages,
232 attorney fees, expenses, and costs; requiring a court
233 to impose civil penalties under certain circumstances;
234 providing for the deposit or distribution of civil
235 penalties; requiring the equal distribution of
236 punitive damages between victims and the trust fund;
237 requiring the remittance of collected moneys to the
238 Department of Revenue for deposit into a specified
239 trust fund; providing that such actions are subject to
240 specified statutes of limitations; providing an
241 affirmative defense for owners or operators of public
242 lodging establishments under certain circumstances;
243 creating s. 509.210, F.S.; requiring the Division of



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244 Hotels and Restaurants of the Department of Business
245 and Professional Regulation, in consultation with a
246 certain person and certain entities, to adopt by rule
247 certain educational programs; authorizing the owner or
248 operator of a public food service or lodging
249 establishment to adopt its own educational program;
250 requiring the division to approve such programs under
251 certain circumstances; requiring all public food
252 service and lodging establishments to provide proof of
253 training to the division; authorizing the division to
254 adopt emergency rules; providing legislative findings;
255 amending s. 772.104, F.S.; specifying that certain
256 provisions concerning civil actions for criminal
257 practices do not apply to actions that may be brought
258 under s. 787.061, F.S.; amending s. 95.11, F.S.;

259 conforming provisions to changes made by the act;
260 providing an effective date.