

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; defining terms;
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, penalties, punitive
9 damages, attorney fees, expenses, and costs; requiring
10 a court to impose civil penalties in certain
11 circumstances; providing for the deposit or
12 distribution of civil penalties; requiring the equal
13 distribution of punitive damages between victims and a
14 specified trust fund; providing that such actions are
15 subject to specified statutes of limitations;
16 providing an affirmative defense for owners or
17 operators of public lodging establishments under
18 certain circumstances; amending s. 772.104, F.S.;
19 specifying that certain provisions concerning civil
20 actions for criminal practices do not apply to actions
21 that may be brought under s. 787.061, F.S.; creating
22 s. 509.210, F.S.; requiring educational programs for
23 employees of public food service and lodging
24 establishments regarding human trafficking; specifying
25 proof of compliance requirements for establishments;

26 requiring rulemaking; providing emergency rulemaking
 27 authority and an exemption from specified provisions
 28 for the Division of Hotels and Restaurants; amending
 29 s. 95.11, F.S.; conforming provisions to changes made
 30 by the act; providing an effective date.

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

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

36 Section 2. Section 787.061, Florida Statutes, is created
 37 to read:

38 787.061 Civil actions by victims of human trafficking.-

39 (1) FINDINGS.-The Legislature finds that, to achieve the
 40 intent of the Legislature relating to human trafficking
 41 expressed in s. 787.06(1)(d), it is necessary to provide a civil
 42 cause of action for the recovery of compensatory and punitive
 43 damages, attorney fees, and costs.

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

45 (a) "Facilitator" means a person who knowingly, or in
 46 willful blindness, assists or provides goods or services to a
 47 trafficker which assist or enable the trafficker to carry out
 48 human trafficking. The term does not include a person who
 49 facilitates human trafficking as a result of force, threat, or
 50 coercion.

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

53 (c) "Trafficker" means any person who knowingly engages in
54 human trafficking, attempts to engage in human trafficking, or
55 benefits financially by receiving anything of value from
56 participation in a venture that has subjected a person to human
57 trafficking.

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

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

62 (f) "Victim of human trafficking" means a person subjected
63 to coercion, as defined in s. 787.06, for the purpose of being
64 used in human trafficking; a child under 18 years of age
65 subjected to human trafficking; or an individual subjected to
66 human trafficking as defined by federal law.

67 (g) "Willful blindness" exists when a person has knowledge
68 of information that would raise suspicions in a reasonable
69 person and he or she deliberately refrains from obtaining
70 confirmation of or acting on the information because he or she
71 wants to remain in ignorance, such that knowledge of the facts
72 avoided can reasonably and fairly be imputed to the person who
73 avoided confirming it.

74 (3) CIVIL CAUSE OF ACTION.—

75 (a) A victim of human trafficking has a civil cause of

76 action against the trafficker or facilitator who victimized her
77 or him and may recover damages as provided in this section.

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

82 (c) A victim who prevails in any such action is entitled
83 to recover economic and noneconomic damages, penalties, punitive
84 damages, reasonable attorney fees, reasonable investigative
85 expenses, and costs.

86 1. Economic damages include, but are not limited to, past
87 and future medical and mental health expenses; repatriation
88 expenses, when a victim elects repatriation; and all other
89 reasonable costs and expenses incurred by the victim in the past
90 or estimated to be incurred by the victim in the future as a
91 result of the human trafficking.

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

97 (d) The remedies provided in this section are in addition
98 to and cumulative with other legal and administrative remedies
99 available to victims of human trafficking, except that a victim
100 may not recover under both this section and s. 772.104(2). If a

101 parent or legal guardian knowingly or through willful blindness
102 trafficked the victim, facilitated such trafficking, or
103 otherwise participated in the human trafficking of the victim,
104 such parent or legal guardian is not entitled to damages or
105 distributions under this section.

106 (e) If a victim prevails in an action under this section,
107 in addition to any other award imposed, the court shall assess a
108 civil penalty against the defendant in the amount of \$50,000.
109 This penalty is in addition to and not in lieu of any other
110 damage award. The civil penalty must be assessed by the court
111 and may not be disclosed to the jury. The entire \$50,000 civil
112 penalty shall be deposited into the trust fund unless the
113 proceeds become subject to equitable distribution under
114 paragraph (g).

115 (f) If a victim prevails in an action under this section,
116 and if one or more law enforcement agencies rescued the victim
117 or stopped the abuse or exploitation of a victim on the property
118 where it occurred, the court shall assess a civil penalty
119 against the defendant in the amount of \$50,000 and award the
120 penalty to such law enforcement agencies to fund future efforts
121 to combat human trafficking. This penalty is in addition to, and
122 not in lieu of, any other damage award or civil penalty. The
123 court shall equitably distribute this civil penalty among the
124 law enforcement agencies. The entire \$50,000 civil penalty shall
125 be distributed to the law enforcement agencies unless the

126 proceeds become subject to equitable distribution under
127 paragraph (g).

128 (g) If an action brought under this section is either
129 settled prior to a jury verdict or the victim is unable to
130 recover the full amount of the compensatory damages caused by
131 the human trafficking, the court must determine the percentage
132 of the victim's damages that were recovered, after deducting the
133 victim's reasonable and necessary out-of-pocket expenses, but
134 before deducting attorney fees, and that same percentage of
135 \$50,000 shall be paid from the recovery to the trust fund. If
136 one or more law enforcement agencies are entitled to a civil
137 penalty under paragraph (f), that same percentage of \$50,000
138 shall be paid from the recovery to the law enforcement agencies
139 to fund future efforts to combat human trafficking.

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

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

146 (4) STATUTE OF LIMITATIONS.—The statutes of limitations as
147 specified in s. 95.11(7) and (9) are applicable to actions
148 brought under this section.

149 (5) AFFIRMATIVE DEFENSE.—

150 (a) In any action brought under this section against the

151 owner or operator of a public food service or lodging
152 establishment based on a claim of vicarious liability for an
153 employee's conduct, it is an affirmative defense to punitive
154 damages recoverable under such claim if the owner or operator
155 proves by the greater weight of evidence that:

156 1. Its personnel have been trained to identify and report
157 suspected human trafficking activity in accordance with s.
158 509.210 and rules adopted thereunder.

159 2. The owner or operator had in place an employee protocol
160 or employee code of conduct to detect and report suspected human
161 trafficking activity to appropriate law enforcement authorities,
162 which may include the National Human Trafficking Hotline, the
163 United States Department of Justice Hotline, the Florida Abuse
164 Hotline, or local law enforcement authorities.

165 3. If the victim of human trafficking was a minor at the
166 time of the trafficking, the owner or operator exercised
167 reasonable care and diligence, screening, training, overseeing,
168 and supervising the employee, and made a reasonable attempt to
169 ensure compliance with the anti-human-trafficking protocols and
170 training required by this section.

171 (b) If the victim of human trafficking was an adult at the
172 time of the trafficking, the affirmative defense provided in
173 this subsection may be overcome with proof by clear and
174 convincing evidence that the officers, directors, or managers of
175 the owner or operator of the public food service or lodging

176 establishment knowingly, or in willful blindness, condoned,
177 ratified, permitted, caused, or consented to the conduct
178 constituting human trafficking or the facilitation of such
179 trafficking.

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

182 772.104 Civil cause of action.—

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

185 Section 4. Section 509.210, Florida Statutes, is created
186 to read:

187 509.210 Training of public food service and lodging
188 establishment personnel regarding human trafficking.—

189 (1) In consultation with the Attorney General, human
190 trafficking victim advocacy organizations, and state and
191 national restaurant and lodging associations, the division shall
192 adopt by rule one or more educational programs designed to train
193 employees of public food service and lodging establishments in
194 the identification and reporting of suspected human trafficking
195 activity. The owner or operator of a public food service or
196 lodging establishment may also adopt its own educational program
197 for this purpose, which must be submitted to the division and
198 approved by it for the owner's or operator's use. The division
199 shall approve such a program for the use by the owner or
200 operator and its affiliated establishments if it is determined

201 to be at least as comprehensive and effective as the other
202 programs adopted by the division by rule. The rule must require
203 the owner or operator of each public food service or lodging
204 establishment to train those classes of employee reasonably
205 expected to routinely interact with guests, using an approved
206 educational program, within a reasonable period of time after
207 hiring, and at appropriate intervals thereafter, and to maintain
208 documentation of such training for routine inspection. If the
209 owner or operator fails to comply with the rule's requirements,
210 the division shall impose administrative sanctions pursuant to
211 s. 509.261.

212 (2) All public food service and lodging establishments
213 shall provide the division with proof of employee training upon
214 request, including, but not limited to, at the time of any
215 division inspection of the establishment. Proof of training for
216 each employee shall include the name, date of birth, and job
217 title of the trained employee, the date the training occurred,
218 and the approved educational program used.

219 Section 5. The Division of Hotels and Restaurants of the
220 Department of Business and Professional Regulation may adopt
221 emergency rules pursuant to s. 120.54, Florida Statutes, to
222 implement s. 509.210, Florida Statutes, as created by this act.
223 The Legislature finds emergency rulemaking power necessary for
224 the preservation of the rights and welfare of the people of
225 Florida and to address the scourge of human trafficking in our

226 | state. The adoption of emergency rules pursuant to this section
 227 | is exempt from s. 120.54(4)(a).

228 | Section 6. Subsections (7) and (9) of section 95.11,
 229 | Florida Statutes, are amended to read:

230 | 95.11 Limitations other than for the recovery of real
 231 | property.—Actions other than for recovery of real property shall
 232 | be commenced as follows:

233 | (7) FOR INTENTIONAL TORTS BASED ON ABUSE.—An action
 234 | founded on alleged abuse, as defined in s. 39.01, s. 415.102, or
 235 | s. 984.03, ~~or~~ incest, as defined in s. 826.04, or human
 236 | trafficking, as defined in s. 787.06, may be commenced at any
 237 | time within 7 years after the age of majority, or within 4 years
 238 | after the injured person leaves the dependency of the abuser, or
 239 | within 4 years from the time of discovery by the injured party
 240 | of both the injury and the causal relationship between the
 241 | injury and the abuse, whichever occurs later.

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

248 | Section 7. This act shall take effect October 1, 2018.