

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.