

By Senator Sobel

33-00321B-13

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1 A bill to be entitled
2 An act relating to human trafficking; creating the
3 "Florida Victim's Relief Act"; creating s. 90.50355,
4 F.S.; defining the terms "confidential communication,"
5 "human-trafficking counselor," "trained volunteer,"
6 and "victim"; providing that a victim of human
7 trafficking has a privilege to refuse to disclose, and
8 to prevent any other person from disclosing, a
9 confidential communication made by the victim to a
10 human-trafficking counselor or trained volunteer or
11 any record made in the course of advising, counseling,
12 or assisting the victim; providing that the
13 confidential communication or record may be disclosed
14 only with the prior written consent of the victim;
15 specifying by whom the privilege may be claimed;
16 amending s. 772.104, F.S.; authorizing a court to
17 award punitive damages to a person who proves by clear
18 and convincing evidence that he or she has been
19 subjected to sex trafficking or human trafficking;
20 amending s. 787.06, F.S.; providing that in each
21 instance in which a defendant pleads nolo contendere
22 to, or is convicted of, or adjudicated delinquent for,
23 the crime of human trafficking, the victim of that
24 crime is entitled to all benefits, rights, and
25 compensation granted pursuant to law; providing that a
26 defendant may assert an affirmative defense that the
27 person was acting under duress or coerced into
28 committing the offense of human trafficking for which
29 he or she is being subject to prosecution; creating s.

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30 796.095, F.S.; authorizing a person convicted of
31 committing the offense of prostitution and other sex
32 crimes to file a motion to vacate the conviction if
33 the person's participation in the offense was the
34 result of the person having been a victim of human
35 trafficking or of a severe form of trafficking;
36 requiring certain specified conditions be met in order
37 to file the motion; requiring the court to hold a
38 hearing on a motion to vacate the conviction;
39 permitting the court to dismiss the motion to vacate
40 the conviction without a hearing if the court finds
41 that the motion fails to assert grounds on which
42 relief may be granted; providing that the person
43 filing a motion to vacate the conviction has the
44 burden of proof by a preponderance of the evidence;
45 providing that a minor is not required to show that
46 force, fraud, or coercion was used against him or her
47 at the time of the offense; providing an effective
48 date.

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

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52 Section 1. This act may be cited as the "Florida Victim's
53 Relief Act."

54 Section 2. Section 90.50355, Florida Statutes, is created
55 to read:

56 90.50355 Human-trafficking counselor-victim privilege.—

57 (1) As used in this section, the term:

58 (a) "Confidential communication" means a communication

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59 between a human-trafficking counselor or trained volunteer and a
60 victim. The communication is confidential if it is not intended
61 to be disclosed to a third person other than those persons who
62 are:

63 1. Present to further the interest of the victim in the
64 consultation, examination, or interview;
65 2. Necessary for the transmission of the communication; and
66 3. Reasonably necessary to accomplish the purposes for
67 which the human-trafficking counselor or the trained volunteer
68 is consulted.

69 (b) "Human-trafficking counselor" means:

70 1. A psychotherapist as that term is defined in s. 90.503;
71 or
72 2. A person who is employed and supervised by one of the
73 persons specified in s. 90.503, who renders services to a victim
74 of human trafficking, and who has received 40 hours of state-
75 accredited training in assisting a victim of human trafficking;
76 in civil and criminal law as it relates to human trafficking; in
77 the trauma issues associated with victims of human trafficking;
78 in peer counseling techniques; in the medical, legal, emotional,
79 and social service needs of victims of human trafficking; and in
80 the federal, state, and community resources available to meet
81 the needs of victims of human trafficking.

82 (c) "Trained volunteer" means a person who has completed 40
83 hours of state-accredited training in assisting a victim of
84 human trafficking identical to that provided to a human-
85 trafficking counselor, who is supervised by members of the staff
86 of the psychotherapist or human-trafficking counselor, and who
87 is included on a list of volunteers which is maintained by the

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88 human-trafficking counselors.

89 (d) "Victim" is a person who consults a human-trafficking
90 counselor or a trained volunteer for the purpose of securing
91 advice, counseling, or assistance concerning a mental, physical,
92 or emotional condition caused by human trafficking, alleged
93 human trafficking, or attempted human trafficking.

94 (3) A victim has a privilege to refuse to disclose, and to
95 prevent any other person from disclosing, a confidential
96 communication made by the victim to a human-trafficking
97 counselor or trained volunteer or of any record made in the
98 course of advising, counseling, or assisting the victim. The
99 confidential communication or record may be disclosed only with
100 the prior written consent of the victim. This privilege includes
101 any advice given by the human-trafficking counselor or trained
102 volunteer in the course of that relationship.

103 (4) The privilege may be claimed by:

104 (a) The victim or the victim's attorney on his or her
105 behalf.

106 (b) A guardian or conservator of the victim.

107 (c) The personal representative of a deceased victim.

108 (d) The human-trafficking counselor or trained volunteer,
109 but only on behalf of the victim. The authority of a human-
110 trafficking counselor or trained volunteer to claim the
111 privilege is presumed in the absence of evidence to the
112 contrary.

113 Section 3. Section 772.104, Florida Statutes, is amended to
114 read:

115 772.104 Civil cause of action.—

116 (1) A ~~Any~~ person who proves by clear and convincing

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117 evidence that he or she has been subjected to a ~~injured by~~
118 ~~reason of any~~ violation of the ~~provisions of~~ s. 772.103 has
119 ~~shall have~~ a cause of action for threefold the actual damages
120 sustained and, in any such action, is entitled to minimum
121 damages in the amount of \$200, and reasonable attorney
122 ~~attorney's~~ fees and court costs in the trial and appellate
123 courts.

124 (2) As an alternative to recovery under subsection (1), a
125 ~~any~~ person who proves by clear and convincing evidence that he
126 or she has been injured by reason of a any violation of the
127 ~~provisions of~~ s. 772.103 due to sex trafficking or human
128 trafficking has ~~shall have~~ a cause of action for threefold the
129 amount gained from the sex trafficking or human trafficking and
130 in any such action is entitled to minimum damages in the amount
131 of \$200 and reasonable attorney ~~attorney's~~ fees and court costs
132 in the trial and appellate courts.

133 (3) ~~In no event shall~~ Punitive damages may be awarded under
134 this section. The defendant may ~~shall be entitled to~~ recover
135 reasonable attorney ~~attorney's~~ fees and court costs in the trial
136 and appellate courts upon a finding that the claimant raised a
137 claim which was without substantial fact or legal support. In
138 awarding attorney ~~attorney's~~ fees and costs under this section,
139 the court may ~~shall~~ not consider the ability of the opposing
140 party to pay such fees and costs. ~~Nothing under~~ This section
141 does not limit ~~shall be interpreted as limiting~~ any right to
142 recover attorney ~~attorney's~~ fees or costs provided under other
143 provisions of law.

144 Section 4. Subsections (8) and (9) are added to section
145 787.06, Florida Statutes, to read:

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146 787.06 Human trafficking.—

147 (8) In each instance in which a defendant pleads nolo
148 contendere to, or is convicted of, or adjudicated delinquent
149 for, the crime of human trafficking under this section, the
150 human-trafficking victim is entitled to all benefits, rights,
151 and compensation granted pursuant to law.

152 (9) When a defendant who is being prosecuted for
153 trafficking in persons is also a victim of human trafficking, it
154 is an affirmative defense that the defendant was acting under
155 duress or coerced into committing the offenses for which he or
156 she is being subject to prosecution. A human-trafficking victim
157 who is also trafficking in persons is not criminally liable for
158 a commercial sex act or illegal sexually explicit performance
159 committed as a direct result of, or incident or related to,
160 being trafficked.

161 Section 5. Section 796.095, Florida Statutes, is created to
162 read:

163 796.095 Prostitution; motion to vacate conviction.—

164 (1) A person convicted of committing the offense of
165 offering, committing, or engaging in prostitution under s.
166 796.07(1), or convicted of a lesser offense when originally
167 charged with a violation of s. 796.07(1), may file a motion to
168 vacate the conviction if the person's participation in the
169 offense was the result of the person having been a victim of
170 human trafficking, as defined in s. 787.06, s. 796.04, or s.
171 796.045, or if the person is a victim of a severe form of
172 trafficking as defined in 22 U.S.C. s. 7102(13).

173 (2) A motion filed under this section must:

174 (a) Be in writing;

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175 (b) Be signed and sworn to by the petitioner;

176 (c) Be made within 6 years after the date that the person
177 ceases to be a victim, subject to reasonable concerns for the
178 safety of the defendant, family members of the defendant, or
179 other victims of the trafficking that may be jeopardized by the
180 bringing of a motion, or for other reasons consistent with the
181 purpose of this section;

182 (d) Describe all the grounds and evidence for vacation of a
183 conviction which are available to the petitioner and of which
184 the petitioner has or by the exercise of reasonable diligence
185 should have knowledge, and provide copies of any official
186 documents showing that the defendant is entitled to relief under
187 this section; and

188 (e) Be subject to the review and written approval of the
189 state attorney responsible for prosecuting the offense that is
190 the subject of the motion to vacate conviction.

191 (3) The court shall hold a hearing on a motion filed under
192 this section if the motion satisfies the requirements of
193 subsection (2). The court may dismiss a motion without a hearing
194 if the court finds that the motion fails to assert grounds on
195 which relief may be granted.

196 (4) If the court grants a motion filed under this section,
197 the court shall vacate the conviction.

198 (5) A person making a motion to vacate pursuant to this
199 section has the burden of proof by a preponderance of the
200 evidence. A person making a motion regarding a conviction
201 related to an offense committed while he or she was a minor is
202 not required to show that force, fraud, or coercion was used
203 against him or her at the time of the offense.

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Section 6. This act shall take effect October 1, 2013.