

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 Attorney General against certain  
 7           persons; providing for damages, attorney fees, and  
 8           costs; providing for civil penalties; providing for  
 9           civil forfeitures; providing procedures for forfeiture  
 10          actions; providing that actions have no statute of  
 11          limitations; requiring an annual report; amending s.  
 12          16.617, F.S.; adding functions and duties for the  
 13          Statewide Council on Human Trafficking; providing for  
 14          administration of the Trust Fund for Victims of Human  
 15          Trafficking and Prevention by the Statewide Council on  
 16          Human Trafficking; providing for initial funding for  
 17          implementation; providing effective dates.

18  
 19 Be It Enacted by the Legislature of the State of Florida:

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

23           787.061 Civil actions for human trafficking; civil  
 24           forfeiture.-

25           (1) SHORT TITLE.-This section may be known as the "Civil

26 Action Against Human Trafficking Compensation Fund Act."

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

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

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

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

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

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

51 (e) "Fund" refers to the Trust Fund for Victims of Human  
52 Trafficking and Prevention created in s. 787.0611.

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

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

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

68 (4) CIVIL CAUSE OF ACTION.—

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

73 (b) The Attorney General, on behalf of a victim of human  
74 trafficking, has a civil cause of action against the trafficker  
75 or facilitator of human trafficking who victimized any person in

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

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

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

101 trafficking shall be the greater of the fair market value of  
102 services provided or the amount realized by the trafficker. The  
103 measure of economic damages for every day of captivity shall be  
104 the same as that payable to a person entitled to damages under  
105 chapter 961. Economic damages of a victim shall also include  
106 past and future medical expenses, repatriation expenses where a  
107 victim elects repatriation, and all other reasonable costs and  
108 expenses incurred by the victim in the past or estimated to be  
109 incurred by the victim in the future as a result of the  
110 trafficking. Noneconomic damages shall be calculated as in a  
111 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 Attorney General prevails  
117 in an action under this section, in addition to any other award  
118 imposed, the court shall award a civil penalty against each  
119 defendant in the amount of \$100,000 and enter judgment thereon  
120 in favor of the prevailing victim or the Attorney General,  
121 whichever was the prevailing party. This penalty shall be in  
122 addition to, and not in lieu of, any punitive damage award. The  
123 civil penalty shall be assessed by the court and not disclosed  
124 to the jury.

125 (g) If a law enforcement agency rescued the victim or

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

132 (5) CIVIL FORFEITURE PROCEEDINGS.—

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

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

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

149 (d) If a law enforcement agency of the state or any other  
150 party, pursuant to the Florida Contraband Forfeiture Act or as

151 otherwise provided for by law, seeks the forfeiture of the same  
152 property as the Attorney General, the Attorney General's claim  
153 shall take priority over the law enforcement agency.

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

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

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

174 (h) If the property is required by law to be titled or  
175 registered, or if the seized property is subject to a perfected

176 security interest in accordance with chapter 679, the Uniform  
177 Commercial Code, the Attorney General shall serve the forfeiture  
178 complaint as an original service of process under the Florida  
179 Rules of Civil Procedure and other applicable law to each person  
180 having an ownership or security interest in the property. The  
181 Attorney General shall also publish, in accordance with chapter  
182 50, notice of the forfeiture complaint once each week for 2  
183 consecutive weeks in a newspaper of general circulation, as  
184 defined in s. 165.031, in the county where the property is  
185 located.

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

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

197 (k) Upon proof by the preponderance of the evidence that  
198 the property to be forfeited was used in the trafficking of a  
199 person for sex or labor, the court must order the property  
200 forfeited to the council. The final order of forfeiture by the



201 court shall perfect in the council right, title, and interest in  
202 and to such property, subject only to the rights and interests  
203 of bona fide lienholders, and, if applicable, shall relate back  
204 to the date of seizure or the filing of a lis pendens.

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

220 (m) If a claimant prevails at the conclusion of a  
221 forfeiture proceeding involving property seized by law  
222 enforcement and the Attorney General decides not to appeal, any  
223 seized property must be released immediately to the person  
224 entitled to possession of the property as determined by the  
225 court. Under such circumstances, the seizing agency shall not

226 assess any towing charges, storage fees, administrative costs,  
227 or maintenance costs against the claimant with respect to the  
228 seized property or forfeiture proceeding.

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

245 (o) If the claimant prevails, at the close of forfeiture  
246 proceedings and any appeal, the court shall award reasonable  
247 trial attorney fees and costs to the claimant if the court finds  
248 that the Attorney General has not proceeded in good faith. The  
249 court may order the Attorney General to pay the awarded attorney  
250 fees and costs from the fund. This subsection does not preclude

251 any party from electing to seek attorney fees and costs under  
252 chapter 57 or other applicable law.

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

258 (7) ANNUAL REPORT.—The council shall issue an annual  
259 report no later than October 1 of each year to the President of  
260 the Senate and the Speaker of the House of Representatives  
261 detailing for the prior fiscal year all of the following:

262 (a) The status of the trust fund.

263 (b) Any actions and outcomes under subsection (4).

264 (c) Whether the council has received forfeited property  
265 under subsection (5). At a minimum, the report must specify the  
266 type, approximate value, court case number, disposition of the  
267 property received, and amount of any proceeds received or  
268 expended.

269 (d) Information about the compensation program.

270 (e) Any information that demonstrates the council's  
271 fulfillment of the purposes of the trust fund during the prior  
272 fiscal year.

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

275 16.617 Statewide Council on Human Trafficking; creation;

276 membership; duties.—

277 (4) DUTIES.—The council shall:

278 (f) Perform the functions and duties as provided in ss.  
 279 787.061 and 787.0611, and administer the Trust Fund for Victims  
 280 of Human Trafficking and Prevention, created by s. 787.0611.

281 Section 3. For the 2017-2018 fiscal year, the sums of  
 282 \$153,000 in recurring funds and \$29,000 in nonrecurring funds  
 283 from the Crimes Compensation Trust Fund are appropriated to the  
 284 Department of Legal Affairs, and 3 full-time equivalent  
 285 positions are authorized, for the purpose of implementing this  
 286 act.

287 Section 4. Except as otherwise expressly provided in this  
 288 act and except for this section, which shall take effect upon  
 289 this act becoming a law, this act shall take effect July 1,  
 290 2017.