



228352

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/17/2017	.	
	.	
	.	
	.	

---

The Committee on Criminal Justice (Bracy) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 787.061, Florida Statutes, is created to  
read:

787.061 Short title.—Sections 787.061–787.066 may be cited  
as the “Civil Action for Victims of Human Trafficking and  
Prevention of Human Trafficking Act.”

Section 2. Section 787.062, Florida Statutes, is created to



228352

11 read:

12 787.062 Definitions for the Civil Action for Victims of  
13 Human Trafficking and Prevention of Human Trafficking Act.-As  
14 used in ss. 787.061-787.066 the term:

15 (1) "Civil forfeiture proceeding" or "forfeiture  
16 proceeding" means a hearing or trial in which the court or jury  
17 determines whether the property must be forfeited.

18 (2) "Claimant" means any party who has proprietary interest  
19 in the property that is the subject of a civil forfeiture action  
20 under s. 787.063(3) and has standing to challenge such  
21 forfeiture.

22 (3) "Council" means the Statewide Council on Human  
23 Trafficking within the Department of Legal Affairs, as created  
24 in s. 16.617.

25 (4) "Facilitator" means a person who knowingly, or in  
26 willful blindness, assists or provides goods or services to a  
27 trafficker which assist or enable the trafficker to carry out  
28 human trafficking.

29 (5) "Human trafficking" has the same meaning as provided in  
30 s. 787.06.

31 (6) "Trafficker" means any person who knowingly engages in  
32 human trafficking, attempts to engage in human trafficking, or  
33 benefits financially by receiving anything of value from  
34 participation in a venture that has subjected a person to human  
35 trafficking.

36 (7) "Trust fund" means the Trust Fund for Victims of Human  
37 Trafficking and Prevention created in s. 787.0611.

38 (8) "Venture" means any group of two or more individuals  
39 associated in fact, whether or not a legal entity.



228352

40 (9) "Victim of human trafficking" means a person subjected  
41 to coercion, as defined in s. 787.06, for the purpose of being  
42 used in human trafficking, a child under 18 years of age  
43 subjected to human trafficking, or an individual subjected to  
44 human trafficking as defined by federal law.

45 (10) "Willful blindness" occurs when a person's suspicions  
46 are aroused about a particular fact and, while she or he  
47 realizes its probability, he or she deliberately refrains from  
48 obtaining confirmation of or acting on the fact because he or  
49 she wants to remain in ignorance, such that knowledge of the  
50 fact avoided can reasonably and fairly be imputed to the person  
51 who avoided confirming it.

52 Section 3. Section 787.063, Florida Statutes, is created to  
53 read:

54 787.063 Civil action for victims of human trafficking;  
55 civil forfeiture proceeding.—

56 (1) FINDINGS.—The Legislature finds that, to achieve the  
57 state's goals relating to human trafficking set forth in s.  
58 787.06(1)(d), it is necessary to provide a civil cause of action  
59 for the recovery of compensatory and punitive damages and for  
60 the civil seizure and forfeiture of the personal and real  
61 property used by those who engage in the human trafficking of  
62 persons for sex or labor and those who either knowingly or  
63 through willful blindness receive profit from, or otherwise  
64 receive direct or indirect economic benefits from, such  
65 trafficking.

66 (2) CIVIL CAUSE OF ACTION.—

67 (a) A victim of human trafficking has a civil cause of  
68 action against the trafficker or facilitator of human



228352

69 trafficking who victimized her or him, and may recover damages  
70 for such victimization as provided in this section.

71 (b) The council, with the consent of the victim, may bring  
72 a civil cause of action against a trafficker or facilitator of  
73 human trafficking who victimizes a person in this state.

74 (c) If the council prevails in any action, the trust fund  
75 shall hold moneys awarded to the victim for distribution to the  
76 victim or her or his parent, legal guardian, or estate. However,  
77 if the victim's parent or legal guardian knowingly, or through  
78 willful blindness, participated in the human trafficking, such  
79 person is not entitled to any distribution or benefit from the  
80 trust fund. If there is no person or estate to appropriately  
81 receive the funds, they must remain in the trust fund and be  
82 used for purposes of the trust fund, as described in s.  
83 787.0611.

84 (d) The action may be brought in any court of competent  
85 jurisdiction and the standard of proof is a preponderance of the  
86 evidence.

87 (e) A victim, or the council on behalf of the victim, who  
88 prevails in any such action is entitled to recover economic and  
89 noneconomic damages, penalties, punitive damages, reasonable  
90 attorney fees, reasonable investigative expenses, and costs.

91 1. The measure of economic damages for services or labor  
92 coerced from the victim of human trafficking shall be the  
93 greater of the fair market value of the labor or services  
94 provided or the amount realized by the trafficker. For purposes  
95 of this subparagraph, the terms "labor" and "services" have the  
96 same meanings as provided in s. 787.06.

97 2. The measure of economic damages for every day that the



228352

98 human trafficking was ongoing shall be calculated as a daily  
99 amount of the compensation payable to a person under s.  
100 961.06(1)(a).

101 3. Economic damages also include past and future medical  
102 and mental health expenses; repatriation expenses, when a victim  
103 elects repatriation; and all other reasonable costs and expenses  
104 incurred by the victim in the past or estimated to be incurred  
105 by the victim in the future as a result of the human  
106 trafficking.

107 4. Noneconomic damages shall be calculated as in a tort  
108 action.

109 (f) The remedies provided in this section are in addition  
110 to and cumulative with other legal and administrative remedies  
111 available to victims of human trafficking, except that a victim  
112 may not recover under both this section and s. 772.104(2).

113 (g) If a victim or the council, on behalf of the victim,  
114 prevails in an action under this section, in addition to any  
115 other award imposed, the court must award a civil penalty  
116 against the defendant in the amount of \$100,000. This penalty is  
117 in addition to, and not in lieu of, any other damage award. The  
118 civil penalty must be assessed by the court and may not be  
119 disclosed to the jury. Proceeds from the civil penalty must be  
120 deposited into the trust fund.

121 (h) If one or more law enforcement agencies rescued the  
122 victim or located the property upon which the abuse or  
123 exploitation of a victim or victims had occurred, the court must  
124 impose a civil penalty against the defendant in the amount of  
125 \$50,000 and award the penalty to the law enforcement agencies to  
126 fund future efforts to combat human trafficking. The court must



228352

127 equitably distribute the civil penalty among the law enforcement  
128 agencies.

129 (i) The court shall have specific authority to consolidate  
130 civil actions for the same facilitator or trafficker for the  
131 purpose of case resolution and aggregate jurisdiction.

132 (3) CIVIL FORFEITURE PROCEEDINGS.—

133 (a) The council may file a civil forfeiture action in the  
134 circuit court of the state seeking a judgment of forfeiture  
135 against an owner of real or personal property that was knowingly  
136 used in the human trafficking of the victim. The civil  
137 forfeiture shall be for the benefit of the trust fund and  
138 proceeds shall be used as specified in s. 787.0611. Proceeds  
139 from the civil forfeiture action must be deposited into the  
140 trust fund.

141 (b) Valid and lawful leases, recorded mortgages, or liens  
142 of innocent third parties which were in existence before the  
143 date of the filing of the civil action and property owned by a  
144 good faith purchaser for value are not subject to forfeiture.

145 (c) Civil forfeiture actions brought under this section are  
146 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 council, the council's claim shall take priority  
153 over that of the law enforcement agency. Any action by a law  
154 enforcement agency filed pursuant to the Florida Contraband  
155 Forfeiture Act or as otherwise provided for by law which



228352

156 involves the same property in an action brought under this  
157 section must remain pending until the conclusion of any action  
158 brought under this section.

159 (e) In a forfeiture proceeding brought under this section,  
160 the council must proceed against property to be forfeited by  
161 filing a complaint in the circuit court in the jurisdiction  
162 where the property is located or where the offense occurred,  
163 paying a filing fee of \$1,000, and depositing a bond of \$1,500  
164 with the clerk of the court. Unless otherwise expressly agreed  
165 to in writing by the parties, the bond is payable to the  
166 claimant if the claimant prevails in the forfeiture proceeding  
167 and in any appeal.

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

175 (g) If the property is required by law to be titled or  
176 registered, or if the property is subject to a perfected  
177 security interest in accordance with chapter 679, the council  
178 shall serve the forfeiture complaint as an original service of  
179 process under the Florida Rules of Civil Procedure and other  
180 applicable law to each person having an ownership or security  
181 interest in the property. The council shall serve notice of the  
182 forfeiture complaint on any known owner or lienholder. The  
183 council must make a diligent search and inquiry for the owner of  
184 the subject property, and if, after such diligent search and



228352

185 inquiry, the council is unable to ascertain the owner or  
186 lienholder, notice is not required. The council shall also  
187 publish, in accordance with chapter 50, notice of the forfeiture  
188 complaint once each week for 2 consecutive weeks in a newspaper  
189 of general circulation, as defined in s. 165.031, in the county  
190 where the property is located.

191 (h) The complaint must describe the property to be  
192 forfeited and state the name of the court in which the complaint  
193 will be filed. If the property to be forfeited has been seized  
194 by a law enforcement agency, the complaint must state the  
195 county, place, and date of seizure and state the name of the law  
196 enforcement agency holding the seized property.

197 (i) The court shall require any claimant who desires to  
198 contest the forfeiture proceeding to file and serve upon the  
199 plaintiff any responsive pleadings and affirmative defenses  
200 within 20 days after receipt of the complaint.

201 (j) Upon proof by a preponderance of the evidence that the  
202 property to be forfeited was used in human trafficking, the  
203 court shall order the property forfeited to the council. The  
204 court shall order the forfeiture of any other property of a  
205 claimant, excluding lienholders, up to the value of any property  
206 subject to forfeiture under this section if any of the property  
207 described in this section:

- 208 1. Cannot be located;  
209 2. Has been transferred to, sold to, or deposited with, a  
210 third party;  
211 3. Has been placed beyond the jurisdiction of the court;  
212 4. Has been substantially diminished in value by any act or  
213 omission of the person in possession of the property; or





228352

214 5. Has been commingled with any property that cannot be  
215 divided without difficulty.

216 (k)1. Property may not be forfeited under this section  
217 unless the council establishes by a preponderance of the  
218 evidence that the owner knew, or should have known after a  
219 reasonable inquiry, that the property was being employed or was  
220 likely to be employed in criminal activity.

221 2. A bona fide lienholder's interest that has been  
222 perfected in the manner prescribed by law may not be forfeited  
223 under this section unless the council establishes by a  
224 preponderance of the evidence that the lienholder had actual  
225 knowledge at the time the lien was made that the property was  
226 being employed or was likely to be employed in criminal  
227 activity. If a lienholder's interest is not subject to  
228 forfeiture under the requirements of this section, such interest  
229 shall be preserved by the court by ordering the lienholder's  
230 interest to be paid as provided in s. 932.7055.

231 3. Property titled or registered between husband and wife  
232 jointly by the use of the conjunctives "and," "and/or," or "or,"  
233 in the manner prescribed by law are not subject to forfeiture  
234 under this section unless the council establishes by a  
235 preponderance of the evidence that the coowner either knew or  
236 had reason to know, after reasonable inquiry, that such property  
237 was employed or was likely to be employed in criminal activity.

238 (l) The court's final order of forfeiture shall perfect in  
239 the council right, title, and interest in and to such property,  
240 subject only to the rights and interests of bona fide  
241 lienholders, and, if applicable, shall relate back to the date  
242 of seizure or the date of filing of the civil forfeiture action.



228352

243       (m) Any interest in, title to, or right to property titled  
244 or registered jointly by the use of the conjunctives "and,"  
245 "and/or," or "or" held by a coowner, other than property held  
246 jointly between husband and wife, may not be forfeited unless  
247 council establishes by a preponderance of the evidence that the  
248 coowner either knew, or had reason to know, after reasonable  
249 inquiry, that the property was employed or was likely to be  
250 employed in criminal activity. When the interests of each  
251 culpable coowner are forfeited, any remaining coowners shall be  
252 afforded the opportunity to purchase the forfeited interest in,  
253 title to, or right to the property from the council. If any  
254 remaining coowner does not purchase such interest, the council  
255 may hold the property in coownership, sell its interest in the  
256 property, liquidate its interest in the property, or dispose of  
257 its interest in the property in any other reasonable manner.

258       (n) Following an order of forfeiture to the council,  
259 subject only to the rights and interests of bona fide  
260 lienholders, the forfeited property, or the proceeds from the  
261 sale of such forfeited property, shall be transferred to the  
262 trust fund. The council must sell the property at public auction  
263 or by sealed bid to the highest bidder, except for real  
264 property, which must be sold in a commercially reasonable manner  
265 after appraisal by listing on the market, or salvage, trade, or  
266 transfer the property to any public or nonprofit organization.  
267 The council shall destroy any image and the medium on which the  
268 image is recorded, including, but not limited to, a photograph,  
269 video tape, diskette, compact disc, or fixed disk made in  
270 violation of s. 810.145 when the image and the medium on which  
271 it is recorded is no longer needed for an official purpose. The



228352

272 council may not sell or retain any image. If the forfeited  
273 property is subject to a lien preserved by the court, the  
274 council shall sell the property with the proceeds being used  
275 toward satisfaction of any liens or satisfy the lien before  
276 taking any action authorized by this subsection.

277 (o) If a claimant prevails at the conclusion of a  
278 forfeiture proceeding involving property seized by a law  
279 enforcement agency and the council decides not to appeal, any  
280 seized property must be released immediately to the person  
281 entitled to possession of the property as determined by the  
282 court. Under such circumstances, the seizing agency may not  
283 assess any towing charges, storage fees, administrative costs,  
284 or maintenance costs against the claimant with respect to the  
285 seized property or forfeiture proceeding.

286 (p) If a claimant prevails at the conclusion of a  
287 forfeiture proceeding involving seized property, the trial court  
288 shall require the seizing agency to pay to the claimant the  
289 reasonable loss of value of the seized property. If a claimant  
290 prevails at trial or on appeal and the seizing agency retained  
291 the seized property during the trial or appellate process, the  
292 trial court must also require the seizing agency to pay to the  
293 claimant any loss of income directly attributed to the continued  
294 seizure of income-producing property during the trial or  
295 appellate process. If the claimant prevails on appeal, the  
296 seizing agency must immediately release the seized property to  
297 the person entitled to possession of the property as determined  
298 by the court and pay any cost as assessed by the court, and may  
299 not assess any towing charges, storage fees, administrative  
300 costs, or maintenance costs against the claimant with respect to



228352

301 the seized property or the forfeiture proceeding. However,  
302 release of the seized property is not required if the seizing  
303 agency has a pending forfeiture action as described in paragraph  
304 (d).

305 (q) If the claimant prevails, at the conclusion of  
306 forfeiture proceedings and any appeal, the court must award  
307 reasonable attorney fees and costs to the claimant if the court  
308 finds that the council has not proceeded in good faith. The  
309 court may order the council to pay the awarded attorney fees and  
310 costs from the trust fund. This subsection does not preclude any  
311 party from electing to seek attorney fees and costs under  
312 chapter 57 or other applicable law.

313 (4) STATUTE OF LIMITATIONS.—There is no statute of  
314 limitations for actions brought pursuant to this section.

315 Section 4. Section 787.064, Florida Statutes, is created to  
316 read:

317 787.064 Compensation from the Trust Fund for Victims of  
318 Human Trafficking and Prevention.—

319 (1) The council shall establish a program for compensation  
320 of victims of human trafficking. The council shall establish an  
321 application form and procedures for application. Information  
322 about the program must be posted on the Department of Legal  
323 Affairs' website. The council may choose to accept applications  
324 electronically. Applications for compensation must be made  
325 available in English, Spanish, and Creole.

326 (2) Up to 20 percent of all proceeds received from  
327 forfeiture actions shall be set aside for the program. If the  
328 funds available for the program at any time exceed \$2 million,  
329 the set asides shall be discontinued and may not be resumed



228352

330 until the fund balance is reduced to less than \$1 million by  
331 disbursement made under this section.

332 (3) A victim of human trafficking may apply to the council  
333 for compensation under this section within 7 years of the end of  
334 the human trafficking. If the victim is a minor, regardless of  
335 when the human trafficking on which the application is made  
336 occurred, application may be made by her or his parent or legal  
337 guardian if the victim is under 18 years of age or by the victim  
338 within 3 years after turning 18 years of age.

339 (4) Compensation may not be granted unless the council  
340 finds that the applicant was a victim of human trafficking.  
341 Compensation shall be granted on an actual need basis.  
342 Compensation may not be denied based on the victim's familial  
343 relationship to the trafficker or facilitator, except to prevent  
344 unjust enrichment of the trafficker or facilitator.

345 (5) Compensation made under this section is considered  
346 payment of last resort which follows all other sources. Any  
347 compensation shall be reduced by the amount of any other  
348 payments received or to be received by the victim as a result of  
349 the human trafficking.

350 (6) Compensation may not exceed \$10,000 for a victim of  
351 human trafficking. Regardless of the number of victims applying,  
352 payments for compensation are limited in the aggregate to  
353 \$100,000 against any one trafficker or facilitator. If the total  
354 applied for by victims exceeds the aggregate limit of \$100,000,  
355 the council shall prorate the compensation based upon the actual  
356 need of the victims to the total applied for.

357 (7) Compensation may not be distributed before the  
358 expiration of 2 years after the date any victim is found by the



228352

359 council to be approved for compensation under this section. If,  
360 during this 2-year period, more than one claim is made against  
361 the same trafficker or facilitator, the eligible payments shall  
362 be prorated as described in subsection (6). If no additional  
363 claims are made, the compensation may be distributed to the  
364 victim. Compensation shall be distributed from the set asides in  
365 the trust fund.

366 (8) If a victim receives compensation in excess of the  
367 amount authorized in this section, the victim shall reimburse  
368 the trust fund for any excess amount within 60 days after the  
369 victim receives it or 60 days after the compensation is  
370 determined to be in excess of that authorized by law, whichever  
371 is later.

372 (9) If at any time the funds in the set asides of the trust  
373 fund are insufficient to satisfy any approved compensation, the  
374 council shall satisfy such undistributed compensation or portion  
375 thereof as soon as a sufficient amount of funds have been set  
376 aside for the program. When there is more than one undistributed  
377 compensation outstanding, such compensation shall be paid in the  
378 order in which the compensation was approved by the council.

379 (10) Compensation granted final approval by the council is  
380 not subject to appeal or to any other pending proceeding.

381 (11) The council shall establish rules, guidelines, and an  
382 implementation plan and shall file a copy, and any subsequent  
383 amendments thereto, with the Department of Legal Affairs when  
384 adopted.

385 Section 5. Section 787.065, Florida Statutes, is created to  
386 read:

387 787.065 Annual Report of the Civil Action for Victims of



228352

388 Human Trafficking and Prevention of Human Trafficking Act.—The  
389 council shall issue an annual report no later than October 1 of  
390 each year to the President of the Senate and the Speaker of the  
391 House of Representatives detailing for the prior fiscal year all  
392 of the following:

393 (1) The status of the trust fund.

394 (2) Any actions and outcomes under s. 787.063.

395 (3) Whether the council has received forfeited property  
396 under s. 787.063. At a minimum the report must specify the type,  
397 approximate value, court case number, disposition of the  
398 property received, and amount of any proceeds received or  
399 expended.

400 (4) Information about the compensation program.

401 (5) Any information that demonstrates the council's  
402 fulfillment of the purposes of the trust fund during the prior  
403 fiscal year.

404 Section 6. Paragraph (f) is added to subsection (4) of  
405 section 16.617, Florida Statutes, to read:

406 16.617 Statewide Council on Human Trafficking; creation;  
407 membership; duties.—

408 (4) DUTIES.—The council shall:

409 (f) Perform the functions and duties as provided in ss.  
410 787.061-787.066 and administer the Florida Compensation Trust  
411 Fund for Survivors of Human Trafficking as created in s.  
412 787.0611.

413 Section 7. For the 2017-2018 fiscal year, the sums of  
414 \$153,000 in recurring funds and \$29,000 in nonrecurring funds  
415 from the Crimes Compensation Trust Fund are appropriated to the  
416 Department of Legal Affairs, and three full-time equivalent



417 positions are authorized, for the purpose of implementing this  
418 act.

419 Section 8. This act shall take effect October 1, 2017.

420

421 ===== T I T L E A M E N D M E N T =====

422 And the title is amended as follows:

423 Delete everything before the enacting clause  
424 and insert:

425 A bill to be entitled

426 An act relating to victims of human trafficking;  
427 creating s. 787.061, F.S.; providing a short title;  
428 creating s. 787.062, F.S.; defining terms; creating s.  
429 787.063, F.S.; providing legislative findings;  
430 creating a civil cause of action for victims of human  
431 trafficking, or for the Statewide Council on Human  
432 Trafficking on their behalves, against a trafficker or  
433 facilitator; providing procedures and requirements for  
434 bringing a claim; requiring a court to impose a civil  
435 penalty against a defendant if a victim, or the  
436 council on the victim's behalf, prevails; requiring a  
437 court to impose a civil penalty and award it equitably  
438 to one or more law enforcement agencies under certain  
439 circumstances; authorizing the council to file a civil  
440 forfeiture action for the council's benefit; requiring  
441 that proceeds from civil forfeiture be deposited into  
442 the Trust Fund for Victims of Human Trafficking and  
443 Prevention; providing procedures and requirements for  
444 civil forfeiture actions; providing that such actions  
445 are not subject to a statute of limitations; creating





228352

446 s. 787.064, F.S.; requiring the council to establish a  
447 program for the compensation of victims of human  
448 trafficking; requiring the council to establish an  
449 application form and procedures for application;  
450 requiring that applications be made available in  
451 certain languages; providing procedures and  
452 requirements for the program for compensating victims  
453 and the administration of funds; providing for  
454 rulemaking; creating s. 787.065, F.S.; requiring the  
455 council to issue an annual report to the Legislature  
456 which includes specified information, by a specified  
457 date; amending s. 16.617, F.S.; adding functions and  
458 duties for the council; providing for administration  
459 of the trust fund by the council; providing  
460 appropriations; providing an effective date.