

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 972

INTRODUCER: Senator Bracy

SUBJECT: Human Trafficking

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Pre-meeting
2.			JU	
3.			AP	

I. Summary:

SB 972 creates a civil cause of action and a civil forfeiture action for minor victims of human trafficking.

The bill also:

- Allows specified representatives to bring a civil action on behalf of the minor human trafficking victim;
- Allows a civil action to be brought on behalf of and for the benefit of the Florida Compensation Trust Fund for Survivors of Human Trafficking created in SB 970;
- Requires a victim or the trust fund to prove his or her case by the greater weight of the evidence;
- Specifies if the victim or the trust fund prevails, he or she is entitled to recover reasonable attorney fees, reasonable investigative expenses, court costs, economic and noneconomic damages, forfeited personal and real property, and any other applicable civil penalties;
- Allows a victim to request the court to close the hearings for the civil action or civil forfeiture to the public and that any information in the court file and online docket, which identifies a victim of human trafficking, be redacted or sealed;
- Requires the court impose civil penalties;
- Requires the Governor appoint an administrator and a three-person panel for the Florida Compensation Trust Fund for Survivors of Human Trafficking; and
- Requires the Governor's office to prepare and issue an annual report on the compliance of the trust fund.

The bill will have a fiscal impact on the Florida Department of Law Enforcement. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017.

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There is an estimated 20.9 million adults and children in the world who are in some sort of forced labor or sexual exploitation. Of that number, an estimated 26 percent of them are children, and in 2010, it was estimated that as many as 300,000 children in the United States were at risk for exploitation each year.¹

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking by using labor or services or through commercial sexual activity.²

Civil Forfeiture for Human Trafficking

Section 787.06(7), F.S., allows for any real property or personal property that was used, attempted to be used, or intended to be used in violation of the human trafficking statute, s. 787.06, F.S., to be seized and forfeited subject to the provisions of the Florida Contraband Forfeiture Act.³

Civil Cause of Action

Victims of human trafficking have a civil cause of action against a person who:

- With criminal intent, has:
 - Received any proceeds derived, directly or indirectly, from a pattern of criminal activity; or
 - Through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of criminal activity or through the collection of an unlawful debt, has acquired or maintained, directly or indirectly, any interest in or control of any enterprise or real property.
- Was employed by or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.

¹ U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (December 2011) available at http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited March 26, 2017). Polaris, *Human Trafficking: The Facts*, 2016, available at <https://polarisproject.org/facts> (last visited March 26, 2017).

² See ss. 787.06(3) and (4), F.S.

³ The Florida Contraband Forfeiture Act allows state and local law enforcement agencies to deter and prevent the continued use of contraband articles for criminal purposes while protecting the proprietary interests of innocent owners and lienholders. Sections 932.704(1), F.S.

- Has conspired or endeavored to violate any of the actions listed above.⁴

The civil cause of action allows for threefold the actual damages sustained. The victim is entitled to minimum damages of \$200 and reasonable attorney's fees and court costs. Section 772.104(3), F.S., prohibits punitive damages from being awarded. The standard of proof for the civil cause of action is clear and convincing evidence.⁵

The statute of limitations for the civil cause of action is 5 years after the conduct constituting a violation of one of the above stated provisions. The statute of limitations is suspended during prosecution for the criminal activity or criminal conduct, which is the basis for the civil action and for two years after its conclusion.⁶

Statewide Council on Human Trafficking

The Attorney General is the head of the Department of Legal Affairs.⁷ The Department of Legal Affairs (DLA) is responsible for providing all legal services required by any executive department unless otherwise provided by law. Additionally, the DLA administers certain trust funds and related programs that support crime victim services, criminal investigations,⁸ and crime prevention.⁹

The Statewide Council on Human Trafficking resides within the DLA "for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to fight commercial sexual exploitation as a form of human trafficking and to support victims."¹⁰

III. Effect of Proposed Changes:

The bill specifies that in order to combat human trafficking, it is the intent of the Legislature to create a civil cause of action for the minors who are victims of human trafficking and to establish the Florida Compensation Trust Fund for Survivors of Human Trafficking.

The bill creates an additional civil cause of action for a minor victim of human trafficking to bring against the trafficker or facilitator of human trafficking who victimized the minor. The minor victim may recover actual and punitive damages and may seize and have forfeited the personal and real property of the trafficker or facilitator used in the trafficking.

Specifically the bill provides legislative findings, which state that:

- The Legislature finds that in order to achieve the goals relating to human trafficking expressed in s. 787.06(1)(d), F.S., it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages and for the civil seizure and forfeiture of the

⁴ Section 772.103, F.S.

⁵ Section 772.104, F.S.

⁶ Section 772.17, F.S.

⁷ Section 16.015, F.S.

⁸ Sections 16.555 and 16.556, F.S.

⁹ Section 16.54, F.S.

¹⁰ Section 16.617, F.S.

personal and real property used by those who engage in the human trafficking of minors for sex or labor and those who either knowingly or through willful blindness receive profit from or otherwise receive direct or indirect economic benefits from such trafficking.

The bill defines the following terms:

- “Facilitate” or “facilitator” means assisting or providing services to a human trafficker which assist or enable a trafficker to carry out human trafficking activities, or one who provides such assistance or provides such services.
- “Human trafficking” has the same meaning as provided in s. 787.06(2), F.S.
- “Trafficker” or “human trafficker” means any person who knowingly, or in reckless disregard of the facts, engages in human trafficking of a minor, attempts to engage in human trafficking of a minor, or benefits financially by receiving anything of value from participation in a venture that has subjected a minor to human trafficking.
- “Trust fund” refers to the Florida Compensation Trust Fund for Survivors of Human Trafficking.
- “Willful blindness” occurs when a person’s suspicions are aroused and he or she realizes the probability that his or her suspicions are well founded, but the person deliberately refrains from obtaining confirmation of or acting on his or her suspicions because he or she wants to remain in ignorance, when knowledge of the suspected activity can be reasonably and fairly imputed to such person.

The bill allows the minor victim to bring a civil action against the trafficker or facilitator of human trafficking who victimized the minor. The bill also allows the following representatives to bring a civil action on behalf of the minor human trafficking victim:

- A parent or guardian of a minor human trafficking victim;
- A person or entity acting on behalf of the minor with the consent of the minor or his or her guardian; or
- The personal representative of the estate of a deceased victim who was a minor.

The bill also allows a civil action to be brought on behalf of and for the benefit of the Florida Compensation Trust Fund for Survivors of Human Trafficking.

A victim or the trust fund on behalf of the victim must prove his or her case by the greater weight of the evidence. If the victim or the trust fund prevails, he or she is entitled to recover reasonable attorney fees, reasonable investigative expenses, court costs, economic and noneconomic damages, forfeited personal and real property, and any other applicable civil penalties. These remedies are in addition to and cumulative with other legal and administrative remedies available to a victim of human trafficking.

At the victim’s request, court hearings for the civil action or civil forfeiture must be closed to the public and any information in the court file and online docket, which identifies a victim of human trafficking, be redacted or sealed.

The bill requires the court to impose, in addition to a prevailing verdict, a civil penalty against the defendant for \$100,000 in favor of the victim or the trust fund on behalf of the victim. The court must also impose a civil penalty against the defendant in favor of the law enforcement

agency for \$50,000, if a law enforcement agency rescued the victim or located the property upon which the abuse or exploitation of one or more victims occurred. This civil penalty must be used in support of the law enforcement agency's future efforts to combat human trafficking.

The bill specifies that the personal or real property of a person who knowingly or through willful blindness allowed his or her property to be used to facilitate human trafficking is subject to civil forfeiture. This is only subject to the disposition of valid and lawful leases or recorded mortgages or liens of innocent third parties that were in effect before the date of the arrest of a trafficker or perpetrator and the filing of the civil action.¹¹

If a victim or the trust fund on behalf of the victim proves the civil forfeiture by the greater weight of the evidence, without having to prove an actual amount of money damages of any individual victim or victims, he or she is entitled to seize the personal and real property of traffickers, perpetrators, and facilitators. The forfeited property must be used or disposed of for the benefit of the prevailing victim or the trust fund.

The bill specifies that there is no statute of limitations for these civil actions or civil forfeiture cases.

SB 970 describes the administration of the Florida Compensation Trust Fund for Survivors of Human Trafficking.¹² This bill provides that the Governor must appoint the administrator of the trust fund, and a three-person panel to fairly evaluate and pay compensation claims based upon the individual circumstances of each victim and the availability of current funds or future funds received. The trust fund administrator must establish guidelines and prepare and submit an implementation plan, and any amendments to the plan, to the Governor.

This bill requires the Executive Office of the Governor to prepare and issue an annual report on the compliance of the trust fund with its duties. The bill also specifies that applications for compensation must be available in at least English and in Spanish.

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill allows a victim to request that the court hearings for the civil cause of action be closed to the public. The bill also allows any information in the court file or online docket that identifies a victim of human trafficking be redacted or sealed. This provision creates a public records concern that needs to be removed from this bill and addressed in a separate bill. SB 1788 creates a public records exemption for this information.

¹¹ The applicability of this provision is unclear.

¹² See SB 970 (2017).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a negative fiscal impact on the private sector to the extent a party loses property because such party participates in, or through willful blindness allows their property to be used in, human trafficking.

C. Government Sector Impact:

The bill would require the Florida Department of Law Enforcement to develop the claims compensation process. Additional staff would also be needed to process claims. The department estimates \$202,755 would need to be appropriated to cover these expenses.¹³

The impact on the courts is unknown at this time.

VI. Technical Deficiencies:

The bill requires the Executive Office of the Governor to issue an annual report on the compliance of the trust fund with its duties. The bill does not specify the duties of the trust fund.

VII. Related Issues:

The bill creates a new civil cause of action for minor victims of human trafficking. The bill does not address how this new civil cause of action works with the current civil cause of action provided in s. 772.104, F.S. The bill provides the standard of proof for the new cause of action is by the preponderance of the evidence, whereas the civil cause of action in s. 722.104, F.S., specifies the standard of proof is clear and convincing evidence. It is unclear if a minor victim could bring a civil cause of action against his or her human trafficker under both causes of action.

The bill does not require that a person be convicted of the criminal offense of human trafficking to have a civil cause of action brought against a person as a “trafficker” or “facilitator” of human trafficking.

Lines 80, 83, and 86 specify that a “minor” victim of human trafficking may bring a civil cause of action against the trafficker or facilitator of human trafficking who victimized the “minor.” The rest of the bill refers to the “victim” and does not delineate that it is a “minor” victim. This

¹³ 2017 Florida Department of Law Enforcement Bill Analysis, SB 972, February 20, 2017, (on file with the Senate Criminal Justice Committee).

disparity makes it unclear if “victims” of human trafficking who are not minors would have a civil cause of action.

The bill does not define who a minor victim of human trafficking is. This undefined term could bring the unintended consequences of a person who the bill sponsor did not intend being able to bring a civil cause of action.

The bill allows a civil cause of action be brought *on behalf of and for the benefit of* the Florida Compensation Trust Fund for Survivors of Human Trafficking. It is unclear how the trust fund can have standing to bring a civil action *on the behalf of or benefit of* the trust fund. The rest of the bill refers *to the trust fund bringing the civil cause of action on the victim’s behalf*. This discrepancy is confusing because the bill does not specifically allow a civil cause of action to be brought by the trust fund on the behalf of a minor victim; however, the bill then refers to the trust fund bringing a civil action on the minor victim’s behalf.

The bill allows a minor victim of human trafficking to file a civil forfeiture action. Chapter 932, F.S., allows a law enforcement agency to file a civil forfeiture action for personal or real property that is used in violation of the Florida Contraband Forfeiture Act. The bill does not specify which forfeiture action would take precedence.

The bill requires a court to impose a civil penalty against the defendant in favor of the *law enforcement agency* for \$50,000, if a law enforcement agency rescued the victim or located the property upon which the abuse or exploitation of one or more victims occurred. The bill does not contemplate the possibility that multiple law enforcement agencies could be involved in the rescue of the victim or the locating of the property where the abuse occurred.

The bill provides that the personal or real property of a person who knowingly or through willful blindness allowed his property to be used to facilitate human trafficking is subject to civil forfeiture. The bill does not require any proof for this civil forfeiture or specify who may seize this property.

Lines 129 – 131 provide that a victim or the trust fund on behalf of the victim *can seize the personal and real property* of specified people. The bill does not require anything for this seizure to occur. This provision raises Fourth Amendment concerns about an unlawful seizure of property.

Lines 129 – 131 provide that a victim or the trust fund on behalf of the victim can seize the personal and real property of *perpetrators* by proving his or her case by the greater weight of the evidence. The bill does not define *perpetrators*.

The bill requires the Governor’s office to issue an annual report on the compliance of the trust fund. The bill does not specify who should receive the report or a date by which the report must be filed.

SB 970 creates the Florida Compensation Trust Fund for Survivors of Human Trafficking that is referred to in this bill.

The statute of limitations provided for the civil cause of action in s. 772.104, F.S., is five years with some provided exceptions.¹⁴ The bill provides that there is no statute of limitations for this new civil and civil forfeiture cause of action.

VIII. Statutes Affected:

This bill creates section 787.061 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁴ Section 772.17, F.S.