



654858

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Rules (Book) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as the "Civil Cause of
Action for Victims of Human Trafficking Act."

Section 2. Section 787.061, Florida Statutes, is created to
read:

787.061 Civil actions by victims of human trafficking.-

(1) FINDINGS.-The Legislature finds that, to achieve the
intent of the Legislature relating to human trafficking



654858

12 expressed in s. 787.06(1)(d), it is necessary to provide a civil
13 cause of action for the recovery of compensatory and punitive
14 damages, attorney fees, and costs.

15 (2) DEFINITIONS.—As used in this section, the term:

16 (a) "Facilitator" means a person who knowingly, or in
17 willful blindness, assists or provides resources, goods, or
18 services to a trafficker which assist or enable the trafficker
19 to carry out human trafficking. The term does not include a
20 person who facilitates human trafficking as a result of force,
21 threat, or coercion.

22 (b) "Human trafficking" has the same meaning as provided in
23 s. 787.06.

24 (c) "Trafficker" means any person who knowingly engages in
25 human trafficking, attempts to engage in human trafficking, or
26 benefits financially by receiving anything of value from
27 participation in a venture that has subjected a person to human
28 trafficking.

29 (d) "Trust fund" means the Trust Fund for Victims of Human
30 Trafficking and Prevention created in s. 787.0611.

31 (e) "Venture" means any group of two or more individuals
32 associated in fact, whether or not a legal entity.

33 (f) "Victim of human trafficking" means a person subjected
34 to coercion, as defined in s. 787.06, for the purpose of being
35 used in human trafficking; a child under 18 years of age
36 subjected to human trafficking; or an individual subjected to
37 human trafficking as defined by federal law.

38 (g) "Willful blindness" exists when a person has knowledge
39 of information that would raise suspicions in a reasonable
40 person and he or she deliberately refrains from obtaining



654858

41 confirmation of or acting on the information because he or she
42 wants to remain in ignorance, such that knowledge of the facts
43 avoided can reasonably and fairly be imputed to the person who
44 avoided confirming it.

45 (3) CIVIL CAUSE OF ACTION.—

46 (a) A victim of human trafficking has a civil cause of
47 action against the trafficker or facilitator who victimized her
48 or him and may recover damages as provided in this section.

49 (b) The action may be brought in any court of competent
50 jurisdiction, and the standard of proof is the greater weight of
51 the evidence, but the standard of proof for punitive damages
52 under this section is clear and convincing evidence.

53 (c) A victim who prevails in any such action is entitled to
54 recover economic and noneconomic damages, penalties, punitive
55 damages, reasonable attorney fees, reasonable investigative
56 expenses, and costs.

57 1. Economic damages include, but are not limited to, past
58 and future medical and mental health expenses; repatriation
59 expenses, when a victim elects repatriation; and all other
60 reasonable costs and expenses incurred by the victim in the past
61 or estimated to be incurred by the victim in the future as a
62 result of the human trafficking.

63 2. Noneconomic damages include pain and suffering,
64 inconvenience, physical impairment, mental anguish,
65 disfigurement, loss of capacity for enjoyment of life, and other
66 nonfinancial losses.

67 (d) The remedies provided in this section are in addition
68 to and cumulative with other legal and administrative remedies
69 available to victims of human trafficking, except that a victim



654858

70 may not recover under both this section and s. 772.104(2). If a
71 parent or legal guardian knowingly or through willful blindness
72 trafficked the victim, facilitated such trafficking, or
73 otherwise participated in the human trafficking of the victim,
74 such parent or legal guardian is not entitled to damages or
75 distributions under this section.

76 (e) If a victim prevails in an action under this section,
77 in addition to any other award imposed, the court shall assess a
78 civil penalty against the defendant in the amount of \$50,000.
79 This penalty is in addition to and not in lieu of any other
80 damage award. The civil penalty must be assessed by the court
81 and may not be disclosed to the jury. The entire \$50,000 civil
82 penalty shall be deposited into the trust fund unless the
83 proceeds become subject to equitable distribution under
84 paragraph (g).

85 (f) If a victim prevails in an action under this section,
86 and if one or more law enforcement agencies rescued the victim
87 or stopped the abuse or exploitation of a victim on the property
88 where it occurred, the court shall assess a civil penalty
89 against the defendant in the amount of \$50,000 and award the
90 penalty to such law enforcement agencies to fund future efforts
91 to combat human trafficking. This penalty is in addition to, and
92 not in lieu of, any other damage award or civil penalty. The
93 court shall equitably distribute this civil penalty among the
94 law enforcement agencies. The entire \$50,000 civil penalty shall
95 be distributed to the law enforcement agencies unless the
96 proceeds become subject to equitable distribution under
97 paragraph (g).

98 (g) If an action brought under this section is either



654858

99 settled before a jury verdict or the victim is unable to recover
100 the full amount of the compensatory damages caused by the human
101 trafficking, the court must determine the percentage of the
102 victim's damages that were recovered, after deducting the
103 victim's reasonable and necessary out-of-pocket expenses, but
104 before deducting attorney fees, and that same percentage of
105 \$50,000 shall be paid from the recovery to the trust fund. If
106 one or more law enforcement agencies are entitled to a civil
107 penalty under paragraph (f), that same percentage of \$50,000
108 shall be paid from the recovery to the law enforcement agencies
109 to fund future efforts to combat human trafficking.

110 (h) The court shall have specific authority to consolidate
111 civil actions for the same trafficker or facilitator for the
112 purpose of case resolution and aggregate jurisdiction.

113 (i) Notwithstanding any other law to the contrary, the
114 amount of punitive damages awarded under this section shall be
115 equally divided between the victim and the trust fund.

116 (j) Moneys collected from penalties, damages, or other
117 costs imposed by this section which are to be deposited into the
118 trust fund shall be remitted to the Department of Revenue for
119 deposit into the Department of Law Enforcement Trust Fund for
120 Victims of Human Trafficking and Prevention.

121 (4) STATUTE OF LIMITATIONS.—The statutes of limitations as
122 specified in s. 95.11(7) and (9) are applicable to actions
123 brought under this section.

124 (5) AFFIRMATIVE DEFENSE.—

125 (a) In any action brought under this section against the
126 owner or operator of a public food service or lodging
127 establishment based on a claim of vicarious liability for an



128 employee's conduct, it is an affirmative defense to punitive
129 damages recoverable under such claim if the owner or operator
130 proves by the greater weight of evidence that:

131 1. Its personnel have been trained to identify and report
132 suspected human trafficking activity in accordance with s.
133 509.210 and rules adopted thereunder.

134 2. The owner or operator had in place an employee protocol
135 or employee code of conduct to detect and report suspected human
136 trafficking activity to appropriate law enforcement authorities,
137 which may include the National Human Trafficking Hotline, the
138 United States Department of Justice Hotline, the Florida Abuse
139 Hotline, or local law enforcement authorities.

140 3. If the victim of human trafficking was a minor at the
141 time of the trafficking, the owner or operator exercised
142 reasonable care and diligence, screening, training, overseeing,
143 and supervising the employee, and exercised reasonable care and
144 diligence in its compliance with the anti-human-trafficking
145 protocols and training required by this section.

146 (b) If the victim of human trafficking was an adult at the
147 time of the trafficking, the affirmative defense provided in
148 this subsection may be overcome with proof by clear and
149 convincing evidence that the officers, directors, or managers of
150 the owner or operator of the public food service or lodging
151 establishment knowingly, or in willful blindness, condoned,
152 ratified, permitted, caused, or consented to the conduct
153 constituting human trafficking or the facilitation of such
154 trafficking or failed to use reasonable care and diligence in
155 its compliance with the anti-human-trafficking protocols and
156 training required by this section.



654858

157 Section 3. Subsection (4) is added to section 772.104,
158 Florida Statutes, to read:

159 772.104 Civil cause of action.—

160 (4) This section does not apply to a cause of action that
161 may be brought under s. 787.061.

162 Section 4. Section 509.210, Florida Statutes, is created to
163 read:

164 509.210 Training of public food service and lodging
165 establishment personnel regarding human trafficking.—

166 (1) In consultation with the Attorney General, human
167 trafficking victim advocacy organizations, and state and
168 national restaurant and lodging associations, the division shall
169 adopt by rule one or more educational programs designed to train
170 employees of public food service and lodging establishments in
171 the identification and reporting of suspected human trafficking
172 activity. The owner or operator of a public food service or
173 lodging establishment may also adopt its own educational program
174 for this purpose, which must be submitted to the division and
175 approved by it for the owner's or operator's use. The division
176 shall approve such a program for the use by the owner or
177 operator and its affiliated establishments if it is determined
178 to be at least as comprehensive and effective as the other
179 programs adopted by the division by rule. The rule must require
180 the owner or operator of each public food service or lodging
181 establishment to train those classes of employee reasonably
182 expected to routinely interact with guests, using an approved
183 educational program, within a reasonable time after hiring, and
184 at appropriate intervals thereafter, and to maintain
185 documentation of such training for routine inspection. If the



654858

186 owner or operator fails to comply with the rule's requirements,
187 the division shall impose administrative sanctions pursuant to
188 s. 509.261.

189 (2) All public food service and lodging establishments
190 shall provide the division with proof of employee training upon
191 request, including, but not limited to, at the time of any
192 division inspection of the establishment. Proof of training for
193 each employee shall include the name, date of birth, and job
194 title of the trained employee, the date the training occurred,
195 and the approved educational program used.

196 Section 5. The Division of Hotels and Restaurants of the
197 Department of Business and Professional Regulation may adopt
198 emergency rules pursuant to s. 120.54, Florida Statutes, to
199 implement s. 509.210, Florida Statutes, as created by this act.
200 The Legislature finds emergency rulemaking power necessary for
201 the preservation of the rights and welfare of the people of
202 Florida and to address the scourge of human trafficking in our
203 state. The adoption of emergency rules pursuant to this section
204 is exempt from s. 120.54(4)(a), Florida Statutes.

205 Section 6. Subsections (7) and (9) of section 95.11,
206 Florida Statutes, are amended to read:

207 95.11 Limitations other than for the recovery of real
208 property.—Actions other than for recovery of real property shall
209 be commenced as follows:

210 (7) FOR INTENTIONAL TORTS BASED ON ABUSE.—An action founded
211 on alleged abuse, as defined in s. 39.01, s. 415.102, or s.
212 984.03, ~~or~~ incest, as defined in s. 826.04, or human
213 trafficking, as defined in s. 787.06, may be commenced at any
214 time within 7 years after the age of majority, or within 4 years



654858

215 after the injured person leaves the dependency of the abuser, or
216 within 4 years from the time of discovery by the injured party
217 of both the injury and the causal relationship between the
218 injury and the abuse, whichever occurs later.

219 (9) SEXUAL BATTERY OFFENSES ON VICTIMS UNDER AGE 16.—An
220 action related to an act constituting a violation of s. 794.011
221 or brought pursuant to s. 787.061 involving a victim who was
222 under the age of 16 at the time of the act may be commenced at
223 any time. This subsection applies to any such action other than
224 one which would have been time barred on or before July 1, 2010.

225 Section 7. This act shall take effect October 1, 2018.

226

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

228 And the title is amended as follows:

229 Delete everything before the enacting clause
230 and insert:

231 A bill to be entitled
232 An act relating to victims of human trafficking;
233 providing a short title; creating s. 787.061, F.S.;;
234 providing legislative findings; defining terms;
235 providing a civil cause of action for victims of human
236 trafficking against a trafficker or facilitator;
237 providing procedures and requirements for bringing a
238 claim; providing for damages, penalties, punitive
239 damages, attorney fees, expenses, and costs; requiring
240 a court to impose civil penalties in certain
241 circumstances; providing for the deposit or
242 distribution of civil penalties; requiring the equal
243 distribution of punitive damages between victims and a



654858

244 specified trust fund; requiring the remittance of
245 certain collected moneys to the Department of Revenue
246 for deposit into a certain trust fund; providing that
247 such actions are subject to specified statutes of
248 limitations; providing an affirmative defense for
249 owners or operators of public lodging establishments
250 under certain circumstances; amending s. 772.104,
251 F.S.; specifying that certain provisions concerning
252 civil actions for criminal practices do not apply to
253 actions that may be brought under s. 787.061, F.S.;
254 creating s. 509.210, F.S.; requiring educational
255 programs for employees of public food service and
256 lodging establishments regarding human trafficking;
257 specifying proof of compliance requirements for
258 establishments; requiring rulemaking; providing
259 emergency rulemaking authority and an exemption from
260 specified provisions for the Division of Hotels and
261 Restaurants; amending s. 95.11, F.S.; conforming
262 provisions to changes made by the act; providing an
263 effective date.