

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 Children, Families, and Elder Affairs

BILL: SB 1044

INTRODUCER: Senator Book

SUBJECT: Victims of Human Trafficking

DATE: February 9, 2018

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|---------------------------|
| 1. | <u>Delia</u> | <u>Hendon</u> | <u>CF</u> | <u>Pre-meeting</u> |
| 2. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 1044 creates an additional civil cause of action for victims of human trafficking. The bill allows victims who prevail in any such action to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs. It requires the court impose civil penalties, the proceeds of which are to be distributed to the Trust Fund for Victims of Human Trafficking and Prevention, created in SB 1046, and to local law enforcement agencies involved in the apprehension of defendants in related criminal matters.

The bill also specifies that the standard of proof for this civil action is by the preponderance of the evidence, and provides an affirmative defense for operators of public lodging establishments.

The bill will likely have an indeterminate impact both on hotels in the state and on the state court system.

The bill has an effective date of July 1, 2018.

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 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.
- Has conspired or endeavored to violate any of the actions listed above.³

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.⁴

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.⁵

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 February 8, 2018). Polaris, *Human Trafficking: The Facts*, 2016, available at <https://polarisproject.org/facts> (last visited February 8, 2018).

² See ss. 787.06(3) and (4), F.S.

³ Section 772.103, F.S.

⁴ Section 772.104, F.S.

⁵ Section 772.17, F.S.

III. Effect of Proposed Changes:

Section 1 provides that this act may be cited as the “Civil Action for Victims of Human Trafficking and Prevention of Human Trafficking Act.”

Section 2 creates s. 787.061, F.S., which provides an additional civil cause of action for victims of human trafficking to bring against the trafficker or facilitator of human trafficking who victimized them and allows the victims to recover damages. The Legislature finds that, to achieve the state’s goals relating to human trafficking set forth 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.

The bill defines the following terms:

- “Facilitator” means a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker, which assist or enable the trafficker to carry out human trafficking. The term does not include a person who facilitates human trafficking as a result of force, threat, or coercion.
- “Human trafficking” has the same meaning as provided in s. 787.06, F.S.
- “Trafficker” means any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.
- “Trust fund” refers to the Trust Fund for Victims of Human Trafficking and Prevention proposed in SB 1046.
- “Venture” means any group of two or more individuals associated in fact, whether or not a legal entity.
- “Victim of human trafficking” means a person subjected to coercion, as defined in s. 787.06, F.S., for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.
- “Willful blindness” occurs when a person has knowledge of information that would raise suspicions in a reasonable person and he or she deliberately refrains from obtaining confirmation of or acting on the information because he or she wants to remain in ignorance, such that knowledge of the fact avoided can reasonably and fairly be imputed to the person who avoided confirming it.

The bill allows a victim to bring a civil action against the trafficker or facilitator of human trafficking who victimized the victim. An action may be brought in any court of competent jurisdiction and the standard of proof is preponderance of the evidence. The court has specific authority to consolidate civil actions for the same trafficker or facilitator for the purpose of case resolution and aggregate jurisdiction.

A victim who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs. The bill requires the noneconomic damages be calculated as in a tort action.

The bill specifies that the measure of economic damages for services or labor coerced from the victim of human trafficking must be the greater of the fair market value of the labor⁶ or services⁷ provided or the amount realized by the trafficker. The economic damages must be calculated as a daily amount of the compensation payable to a person under s. 961.06(1)(a), F.S., for every day that the human trafficking was ongoing.⁸ The bill specifies that the economic damages also include:

- Past and future medical and mental health expenses;
- Repatriation expenses, when a victim elects repatriation; and
- All other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the human trafficking.

The bill specifies that if the victim's parent or legal guardian knowingly, or through willful blindness, participated in the human trafficking, he or she is not entitled to damages or distributions from any successful suit under this section. The bill also states that remedies under this section are in addition to and cumulative with other legal and administrative remedies available to victims of human trafficking.

If a victim prevails in an action, the bill imposes a civil penalty against the defendant of \$100,000. This penalty is in addition to, and not in lieu of, any other damage award. The civil penalty cannot be disclosed to the jury. The proceeds from the civil penalty must be deposited into the trust fund.

The bill also imposes a civil penalty against the defendant in favor of the law enforcement agencies for \$50,000, if one or more law enforcement agencies rescued the victim or located the property upon which the abuse or exploitation occurred. The bill specifies that the award of the penalty to the law enforcement agencies is to fund future efforts to combat human trafficking. The court must equitably distribute the civil penalty among the law enforcement agencies.

The bill requires that any punitive damages awarded be equally divided between the victim and the trust fund.

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

The bill also creates an affirmative defense to an owner or operator of a public lodging establishment when an action is brought against them based on a claim of vicarious liability⁹. In actions alleging a violation against the owner or operator of a public lodging establishment based on vicarious liability, the owner or operator may avoid liability by proving, by a preponderance of the evidence, it:

⁶ Section 787.06(2)(e), F.S., defines "labor" to mean work of economic or financial value.

⁷ Section 787.06(2)(h), F.S., defines "services" to mean any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.

⁸ Section 961.06(1)(a), F.S., provides that monetary compensation (for wrongful incarceration) is calculated at a rate of \$50,000 for each year and can be prorated as necessary to account for a portion of a year.

⁹ According to Black's Law Dictionary, 11th Edition, "vicarious liability" is "the imposition of liability on one person for the actionable conduct of another, based solely on the relationship between the two persons; indirect or imputed legal responsibility for the acts of another; for example, the liability of an employer for the acts of an employee, or, a principal for the torts or [actions] of an agent."

- Required employees of the establishment reasonably expected to routinely interact with guests to complete an educational program designed to effectively train such employees in the identification and reporting of suspected human trafficking within 30 days of hiring or by July 1, 2019, whichever occurs later.
- Had in place an employee protocol or code of conduct to detect and report suspected human trafficking; and
- Took reasonable steps, before the first incident giving rise to such action, to ensure that any employees alleged in the action to have been facilitators of, or otherwise participants in, human trafficking, complied with the recommendations and practices suggested or required in the training, protocols, or policies.

Section 3 amends s. 772.104, F.S., by adding subsection (4), which states that s. 772.104, the section of the Florida Statutes that currently provides a civil cause of action for human trafficking victims, does not apply to a cause of action that may be brought under the newly created s. 787.061, F.S. The effect of this change is to prevent recovery for the same cause of action under both statutes.

Section 4 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There will likely be a negative, indeterminate impact on hotels and restaurants who need to develop an educational program and provide training to employees on recognizing and combating human trafficking. The bill could result in additional lawsuits and damages paid by hotels and restaurants.

C. Government Sector Impact:

There may be an indeterminate impact on the state court system from the creation of a new civil cause of action.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The statute of limitations provided for the civil cause of action related to human trafficking in s. 772.104, F.S., is five years with some provided exceptions.¹⁰ The bill provides that there is no statute of limitations for this new civil cause of action. The Legislature may wish to consider whether policy reasons would support the application of statutes of limitations to the civil liability provisions of the bill. The Florida Supreme Court in *Kipnis v. Bayerische Hypo-Und Vereinsbank*, 202 So. 3d 859, 866 (Fla. 2016), recently explained the policy reasons for statutes of limitations as follows:

Clearly, the purpose of the statute of limitations includes ‘protect[ing] defendants from unfair surprise and stale claims.’ *Raymond James Fin. Servs., Inc. v. Phillips*, 126 So. 3d 186, 192 (Fla. 2013) (quoting *Fla. Dep’t of Health & Rehab. Servs. v. S.A.P.*, 835 So. 2d 1091, 1096 (Fla. 2002)). We have explained that statutes of limitations

afford parties needed protection against the necessity of defending claims which, because of their antiquity, would place the defendant at a grave disadvantage. In such cases how resolutely unfair it would be to award one who has willfully or carelessly slept on his legal rights an opportunity to enforce an unfresh claim against a party who is left to shield himself from liability with nothing more than tattered or faded memories, misplaced or discarded records, and missing or deceased witnesses. Indeed, in such circumstances, the quest for truth might elude even the wisest court.

Major League Baseball v. Morsani, 790 So. 2d 1071, 1075 (Fla. 2001) (quoting *Nardone v. Reynolds*, 333 So. 2d 25, 36 (Fla. 1976)).

Additionally, the bill calculates economic damages as the greater of the fair market value of the labor or services provided by the victim or the amount realized by the trafficker. Considering that some of the services performed by victims of human trafficking may include sexual acts, the bill potentially places an economic value on illegal services, such as prostitution. Depositing the victim on the services performed would likely retraumatize them.

The term ‘willful blindness’ as used and defined in the newly created s. 787.061, F.S., is not a traditional legal term and is vague to a degree which may require extensive litigation to resolve.

¹⁰ Section 772.17, F.S.

The potential \$100,000 and \$50,000 civil penalties may give a disproportionate amount of leverage to force a potential defendant with little to no culpability into settlements.

VIII. Statutes Affected:

This bill substantially amends section 772.104 of the Florida Statutes.
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.