

By Senator Book

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1 A bill to be entitled
2 An act relating to human trafficking; amending s.
3 787.06, F.S.; providing a mandatory minimum term of
4 imprisonment for certain human trafficking offenses;
5 amending s. 847.001, F.S.; redefining the term "adult
6 entertainment establishment" to include businesses
7 that restrict admission to adults which feature a
8 person who engages in certain activities for
9 observation by a patron; amending s. 943.0583, F.S.;
10 prohibiting the assessment of fees against victims of
11 human trafficking who seek expungement of certain
12 criminal history records; changing the evidentiary
13 standard for a certain presumption related to the
14 commission of criminal offenses by victims of human
15 trafficking to a preponderance of the evidence;
16 reenacting ss. 402.82(4)(b), 450.021(5), and
17 450.045(3)(a), F.S., relating to the definition of the
18 term "adult entertainment establishment," the
19 definition of the term "adult theater," and the
20 definition of the term "adult theater," respectively,
21 to incorporate the amendment made to s. 847.001, F.S.,
22 in references thereto; reenacting ss. 943.0582(5),
23 943.0585(4)(a), 943.059(4)(a), and 961.06(1), F.S.,
24 relating to expunction or sealing of certain criminal
25 history records, court-ordered expunction of criminal
26 history records, court-ordered sealing of criminal
27 history records, and the immediate administrative
28 expunction of certain criminal history records,
29 respectively, to incorporate the amendment made to s.

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30 943.0583, F.S., in references thereto; providing an
31 effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Subsection (3) of section 787.06, Florida
36 Statutes, is amended to read:

37 787.06 Human trafficking.—

38 (3) Any person who knowingly, or in reckless disregard of
39 the facts, engages in human trafficking, or attempts to engage
40 in human trafficking, or benefits financially by receiving
41 anything of value from participation in a venture that has
42 subjected a person to human trafficking:

43 (a)1. For labor or services of any child under the age of
44 18 commits a felony of the first degree, punishable as provided
45 in s. 775.082, s. 775.083, or s. 775.084 with a mandatory
46 minimum term of imprisonment of 10 years.

47 2. Using coercion for labor or services of an adult commits
48 a felony of the first degree, punishable as provided in s.
49 775.082, s. 775.083, or s. 775.084 with a mandatory minimum term
50 of imprisonment of 10 years.

51 (b) Using coercion for commercial sexual activity of an
52 adult commits a felony of the first degree, punishable as
53 provided in s. 775.082, s. 775.083, or s. 775.084 with a
54 mandatory minimum term of imprisonment of 10 years.

55 (c)1. For labor or services of any child under the age of
56 18 who is an unauthorized alien commits a felony of the first
57 degree, punishable as provided in s. 775.082, s. 775.083, or s.
58 775.084 with a mandatory minimum term of imprisonment of 10

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59 years.

60 2. Using coercion for labor or services of an adult who is
61 an unauthorized alien commits a felony of the first degree,
62 punishable as provided in s. 775.082, s. 775.083, or s. 775.084
63 with a mandatory minimum term of imprisonment of 10 years.

64 (d) Using coercion for commercial sexual activity of an
65 adult who is an unauthorized alien commits a felony of the first
66 degree, punishable as provided in s. 775.082, s. 775.083, or s.
67 775.084 with a mandatory minimum term of imprisonment of 10
68 years.

69 (e)1. For labor or services who does so by the transfer or
70 transport of any child under the age of 18 from outside this
71 state to within the state commits a felony of the first degree,
72 punishable as provided in s. 775.082, s. 775.083, or s. 775.084
73 with a mandatory minimum term of imprisonment of 10 years.

74 2. Using coercion for labor or services who does so by the
75 transfer or transport of an adult from outside this state to
76 within the state commits a felony of the first degree,
77 punishable as provided in s. 775.082, s. 775.083, or s. 775.084
78 with a mandatory minimum term of imprisonment of 10 years.

79 (f)1. For commercial sexual activity who does so by the
80 transfer or transport of any child under the age of 18 from
81 outside this state to within the state commits a felony of the
82 first degree, punishable by imprisonment for a term of years not
83 exceeding life, or as provided in s. 775.082, s. 775.083, or s.
84 775.084 with a mandatory minimum term of imprisonment of 10
85 years.

86 2. Using coercion for commercial sexual activity who does
87 so by the transfer or transport of an adult from outside this

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88 state to within the state commits a felony of the first degree,
89 punishable as provided in s. 775.082, s. 775.083, or s. 775.084
90 with a mandatory minimum term of imprisonment of 10 years.

91 (g) For commercial sexual activity in which any child under
92 the age of 18, or in which any person who is mentally defective
93 or mentally incapacitated as those terms are defined in s.
94 794.011(1), is involved commits a life felony, punishable as
95 provided in s. 775.082(3)(a)6., s. 775.083, or s. 775.084.

96

97 For each instance of human trafficking of any individual under
98 this subsection, a separate crime is committed and a separate
99 punishment is authorized.

100 Section 2. Paragraph (b) of subsection (2) of section
101 847.001, Florida Statutes, is amended to read:

102 847.001 Definitions.—As used in this chapter, the term:

103 (2) "Adult entertainment establishment" means the following
104 terms as defined:

105 (b) "Adult theater" means an enclosed building or an
106 enclosed space within a building used for presenting either
107 films, live plays, dances, or other performances that are
108 distinguished or characterized by an emphasis on matter
109 depicting, describing, or relating to specific sexual activities
110 for observation by patrons, and which restricts or purports to
111 restrict admission only to adults, or any business that features
112 a person who engages in specific sexual activities for
113 observation by a patron, and which restricts or purports to
114 restrict admission to only adults.

115 Section 3. Subsections (3) and (5) of section 943.0583,
116 Florida Statutes, are amended to read:

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117 943.0583 Human trafficking victim expunction.—

118 (3) A person who is a victim of human trafficking may
119 petition for the expunction of a criminal history record
120 resulting from the arrest or filing of charges for an offense
121 committed or reported to have been committed while the person
122 was a victim of human trafficking, which offense was committed
123 or reported to have been committed as a part of the human
124 trafficking scheme of which the person was a victim or at the
125 direction of an operator of the scheme, including, but not
126 limited to, violations under chapters 796 and 847, without
127 regard to the disposition of the arrest or of any charges.
128 However, this section does not apply to any offense listed in s.
129 775.084(1)(b)1. Determination of the petition under this section
130 should be by a preponderance of the evidence. A conviction
131 expunged under this section is deemed to have been vacated due
132 to a substantive defect in the underlying criminal proceedings.
133 If a person is adjudicated not guilty by reason of insanity or
134 is found to be incompetent to stand trial for any such charge,
135 the expunction of the criminal history record may not prevent
136 the entry of the judgment or finding in state and national
137 databases for use in determining eligibility to purchase or
138 possess a firearm or to carry a concealed firearm, as authorized
139 in s. 790.065(2)(a)4.c. and 18 U.S.C. s. 922(t), nor shall it
140 prevent any governmental agency that is authorized by state or
141 federal law to determine eligibility to purchase or possess a
142 firearm or to carry a concealed firearm from accessing or using
143 the record of the judgment or finding in the course of such
144 agency's official duties. A victim seeking expungement may not
145 be assessed a filing or copy fee under s. 28.24(25) or as

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146 otherwise provided for under law.

147 (5) Official documentation of the victim's status creates a
148 presumption that his or her participation in the offense was a
149 result of having been a victim of human trafficking but is not
150 required for granting a petition under this section. A
151 determination made without such official documentation must be
152 made by a showing of a preponderance of the ~~clear and convincing~~
153 evidence.

154 Section 4. For the purpose of incorporating the amendment
155 made by this act to section 847.001, Florida Statutes, in a
156 reference thereto, paragraph (b) of subsection (4) of section
157 402.82, Florida Statutes, is reenacted to read:

158 402.82 Electronic benefits transfer program.—

159 (4) Use or acceptance of an electronic benefits transfer
160 card is prohibited at the following locations or for the
161 following activities:

162 (b) An adult entertainment establishment as defined in s.
163 847.001.

164 Section 5. For the purpose of incorporating the amendment
165 made by this act to section 847.001, Florida Statutes, in a
166 reference thereto, subsection (5) of section 450.021, Florida
167 Statutes, is reenacted to read:

168 450.021 Minimum age; general.—

169 (5) In order to better ensure the elimination of minors
170 being exploited and becoming victims of human trafficking, a
171 person under the age of 18, whether or not such person's
172 disabilities of nonage have been removed by marriage or
173 otherwise, may not be employed, permitted, or suffered to work
174 in an adult theater, as defined in s. 847.001(2)(b).

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175 Section 6. For the purpose of incorporating the amendment
176 made by this act to section 847.001, Florida Statutes, in a
177 reference thereto, paragraph (a) of subsection (3) of section
178 450.045, Florida Statutes, is reenacted to read:

179 450.045 Proof of identity and age; posting of notices.—

180 (3) (a) In order to provide the department and law
181 enforcement agencies the means to more effectively identify,
182 investigate, and arrest persons engaging in human trafficking,
183 an adult theater, as defined in s. 847.001(2) (b), shall obtain
184 proof of the identity and age of each of its employees or
185 independent contractors, and shall verify the validity of the
186 identification and age verification document with the issuer,
187 before his or her employment or provision of services as an
188 independent contractor.

189 Section 7. For the purpose of incorporating the amendment
190 made by this act to section 943.0583, Florida Statutes, in a
191 reference thereto, subsection (5) of section 943.0582, Florida
192 Statutes, is reenacted to read:

193 943.0582 Prearrest, postarrest, or teen court diversion
194 program expunction.—

195 (5) Expunction or sealing granted under this section does
196 not prevent the minor who receives such relief from petitioning
197 for the expunction or sealing of a later criminal history record
198 as provided for in ss. 943.0583, 943.0585, and 943.059, if the
199 minor is otherwise eligible under those sections.

200 Section 8. For the purpose of incorporating the amendment
201 made by this act to section 943.0583, Florida Statutes, in a
202 reference thereto, paragraph (a) of subsection (4) of section
203 943.0585, Florida Statutes, is reenacted to read:

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204 943.0585 Court-ordered expunction of criminal history
205 records.—The courts of this state have jurisdiction over their
206 own procedures, including the maintenance, expunction, and
207 correction of judicial records containing criminal history
208 information to the extent such procedures are not inconsistent
209 with the conditions, responsibilities, and duties established by
210 this section. Any court of competent jurisdiction may order a
211 criminal justice agency to expunge the criminal history record
212 of a minor or an adult who complies with the requirements of
213 this section. The court shall not order a criminal justice
214 agency to expunge a criminal history record until the person
215 seeking to expunge a criminal history record has applied for and
216 received a certificate of eligibility for expunction pursuant to
217 subsection (2) or subsection (5). A criminal history record that
218 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
219 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
220 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
221 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
222 s. 907.041, or any violation specified as a predicate offense
223 for registration as a sexual predator pursuant to s. 775.21,
224 without regard to whether that offense alone is sufficient to
225 require such registration, or for registration as a sexual
226 offender pursuant to s. 943.0435, may not be expunged, without
227 regard to whether adjudication was withheld, if the defendant
228 was found guilty of or pled guilty or nolo contendere to the
229 offense, or if the defendant, as a minor, was found to have
230 committed, or pled guilty or nolo contendere to committing, the
231 offense as a delinquent act. The court may only order expunction
232 of a criminal history record pertaining to one arrest or one

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233 incident of alleged criminal activity, except as provided in
234 this section. The court may, at its sole discretion, order the
235 expunction of a criminal history record pertaining to more than
236 one arrest if the additional arrests directly relate to the
237 original arrest. If the court intends to order the expunction of
238 records pertaining to such additional arrests, such intent must
239 be specified in the order. A criminal justice agency may not
240 expunge any record pertaining to such additional arrests if the
241 order to expunge does not articulate the intention of the court
242 to expunge a record pertaining to more than one arrest. This
243 section does not prevent the court from ordering the expunction
244 of only a portion of a criminal history record pertaining to one
245 arrest or one incident of alleged criminal activity.
246 Notwithstanding any law to the contrary, a criminal justice
247 agency may comply with laws, court orders, and official requests
248 of other jurisdictions relating to expunction, correction, or
249 confidential handling of criminal history records or information
250 derived therefrom. This section does not confer any right to the
251 expunction of any criminal history record, and any request for
252 expunction of a criminal history record may be denied at the
253 sole discretion of the court.

254 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
255 criminal history record of a minor or an adult which is ordered
256 expunged by a court of competent jurisdiction pursuant to this
257 section must be physically destroyed or obliterated by any
258 criminal justice agency having custody of such record; except
259 that any criminal history record in the custody of the
260 department must be retained in all cases. A criminal history
261 record ordered expunged that is retained by the department is

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262 confidential and exempt from the provisions of s. 119.07(1) and
263 s. 24(a), Art. I of the State Constitution and not available to
264 any person or entity except upon order of a court of competent
265 jurisdiction. A criminal justice agency may retain a notation
266 indicating compliance with an order to expunge.

267 (a) The person who is the subject of a criminal history
268 record that is expunged under this section or under other
269 provisions of law, including former s. 893.14, former s. 901.33,
270 and former s. 943.058, may lawfully deny or fail to acknowledge
271 the arrests covered by the expunged record, except when the
272 subject of the record:

- 273 1. Is a candidate for employment with a criminal justice
274 agency;
- 275 2. Is a defendant in a criminal prosecution;
- 276 3. Concurrently or subsequently petitions for relief under
277 this section, s. 943.0583, or s. 943.059;
- 278 4. Is a candidate for admission to The Florida Bar;
- 279 5. Is seeking to be employed or licensed by or to contract
280 with the Department of Children and Families, the Division of
281 Vocational Rehabilitation within the Department of Education,
282 the Agency for Health Care Administration, the Agency for
283 Persons with Disabilities, the Department of Health, the
284 Department of Elderly Affairs, or the Department of Juvenile
285 Justice or to be employed or used by such contractor or licensee
286 in a sensitive position having direct contact with children, the
287 disabled, or the elderly;
- 288 6. Is seeking to be employed or licensed by the Department
289 of Education, any district school board, any university
290 laboratory school, any charter school, any private or parochial

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291 school, or any local governmental entity that licenses child
292 care facilities;

293 7. Is seeking to be licensed by the Division of Insurance
294 Agent and Agency Services within the Department of Financial
295 Services; or

296 8. Is seeking to be appointed as a guardian pursuant to s.
297 744.3125.

298 Section 9. For the purpose of incorporating the amendment
299 made by this act to section 943.0583, Florida Statutes, in a
300 reference thereto, paragraph (a) of subsection (4) of section
301 943.059, Florida Statutes, is reenacted to read:

302 943.059 Court-ordered sealing of criminal history records.—
303 The courts of this state shall continue to have jurisdiction
304 over their own procedures, including the maintenance, sealing,
305 and correction of judicial records containing criminal history
306 information to the extent such procedures are not inconsistent
307 with the conditions, responsibilities, and duties established by
308 this section. Any court of competent jurisdiction may order a
309 criminal justice agency to seal the criminal history record of a
310 minor or an adult who complies with the requirements of this
311 section. The court shall not order a criminal justice agency to
312 seal a criminal history record until the person seeking to seal
313 a criminal history record has applied for and received a
314 certificate of eligibility for sealing pursuant to subsection
315 (2). A criminal history record that relates to a violation of s.
316 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
317 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
318 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
319 s. 916.1075, a violation enumerated in s. 907.041, or any

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320 violation specified as a predicate offense for registration as a
321 sexual predator pursuant to s. 775.21, without regard to whether
322 that offense alone is sufficient to require such registration,
323 or for registration as a sexual offender pursuant to s.
324 943.0435, may not be sealed, without regard to whether
325 adjudication was withheld, if the defendant was found guilty of
326 or pled guilty or nolo contendere to the offense, or if the
327 defendant, as a minor, was found to have committed or pled
328 guilty or nolo contendere to committing the offense as a
329 delinquent act. The court may only order sealing of a criminal
330 history record pertaining to one arrest or one incident of
331 alleged criminal activity, except as provided in this section.
332 The court may, at its sole discretion, order the sealing of a
333 criminal history record pertaining to more than one arrest if
334 the additional arrests directly relate to the original arrest.
335 If the court intends to order the sealing of records pertaining
336 to such additional arrests, such intent must be specified in the
337 order. A criminal justice agency may not seal any record
338 pertaining to such additional arrests if the order to seal does
339 not articulate the intention of the court to seal records
340 pertaining to more than one arrest. This section does not
341 prevent the court from ordering the sealing of only a portion of
342 a criminal history record pertaining to one arrest or one
343 incident of alleged criminal activity. Notwithstanding any law
344 to the contrary, a criminal justice agency may comply with laws,
345 court orders, and official requests of other jurisdictions
346 relating to sealing, correction, or confidential handling of
347 criminal history records or information derived therefrom. This
348 section does not confer any right to the sealing of any criminal

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349 history record, and any request for sealing a criminal history
350 record may be denied at the sole discretion of the court.

351 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
352 history record of a minor or an adult which is ordered sealed by
353 a court pursuant to this section is confidential and exempt from
354 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
355 Constitution and is available only to the person who is the
356 subject of the record, to the subject's attorney, to criminal
357 justice agencies for their respective criminal justice purposes,
358 which include conducting a criminal history background check for
359 approval of firearms purchases or transfers as authorized by
360 state or federal law, to judges in the state courts system for
361 the purpose of assisting them in their case-related
362 decisionmaking responsibilities, as set forth in s. 943.053(5),
363 or to those entities set forth in subparagraphs (a)1., 4., 5.,
364 6., 8., 9., and 10. for their respective licensing, access
365 authorization, and employment purposes.

366 (a) The subject of a criminal history record sealed under
367 this section or under other provisions of law, including former
368 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
369 deny or fail to acknowledge the arrests covered by the sealed
370 record, except when the subject of the record:

- 371 1. Is a candidate for employment with a criminal justice
372 agency;
- 373 2. Is a defendant in a criminal prosecution;
- 374 3. Concurrently or subsequently petitions for relief under
375 this section, s. 943.0583, or s. 943.0585;
- 376 4. Is a candidate for admission to The Florida Bar;
- 377 5. Is seeking to be employed or licensed by or to contract

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378 with the Department of Children and Families, the Division of
379 Vocational Rehabilitation within the Department of Education,
380 the Agency for Health Care Administration, the Agency for
381 Persons with Disabilities, the Department of Health, the
382 Department of Elderly Affairs, or the Department of Juvenile
383 Justice or to be employed or used by such contractor or licensee
384 in a sensitive position having direct contact with children, the
385 disabled, or the elderly;

386 6. Is seeking to be employed or licensed by the Department
387 of Education, a district school board, a university laboratory
388 school, a charter school, a private or parochial school, or a
389 local governmental entity that licenses child care facilities;

390 7. Is attempting to purchase a firearm from a licensed
391 importer, licensed manufacturer, or licensed dealer and is
392 subject to a criminal history check under state or federal law;

393 8. Is seeking to be licensed by the Division of Insurance
394 Agent and Agency Services within the Department of Financial
395 Services;

396 9. Is seeking to be appointed as a guardian pursuant to s.
397 744.3125; or

398 10. Is seeking to be licensed by the Bureau of License
399 Issuance of the Division of Licensing within the Department of
400 Agriculture and Consumer Services to carry a concealed weapon or
401 concealed firearm. This subparagraph applies only in the
402 determination of an applicant's eligibility under s. 790.06.

403 Section 10. For the purpose of incorporating the amendment
404 made by this act to section 943.0583, Florida Statutes, in a
405 reference thereto, subsection (1) of section 961.06, Florida
406 Statutes, is reenacted to read:

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407 961.06 Compensation for wrongful incarceration.—

408 (1) Except as otherwise provided in this act and subject to
409 the limitations and procedures prescribed in this section, a
410 person who is found to be entitled to compensation under the
411 provisions of this act is entitled to:

412 (a) Monetary compensation for wrongful incarceration, which
413 shall be calculated at a rate of \$50,000 for each year of
414 wrongful incarceration, prorated as necessary to account for a
415 portion of a year. For persons found to be wrongfully
416 incarcerated after December 31, 2008, the Chief Financial
417 Officer may adjust the annual rate of compensation for inflation
418 using the change in the December-to-December "Consumer Price
419 Index for All Urban Consumers" of the Bureau of Labor Statistics
420 of the Department of Labor;

421 (b) A waiver of tuition and fees for up to 120 hours of
422 instruction at any career center established under s. 1001.44,
423 any Florida College System institution as defined in s.
424 1000.21(3), or any state university as defined in s. 1000.21(6),
425 if the wrongfully incarcerated person meets and maintains the
426 regular admission requirements of such career center, Florida
427 College System institution, or state university; remains
428 registered at such educational institution; and makes
429 satisfactory academic progress as defined by the educational
430 institution in which the claimant is enrolled;

431 (c) The amount of any fine, penalty, or court costs imposed
432 and paid by the wrongfully incarcerated person;

433 (d) The amount of any reasonable attorney's fees and
434 expenses incurred and paid by the wrongfully incarcerated person
435 in connection with all criminal proceedings and appeals

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436 regarding the wrongful conviction, to be calculated by the
437 department based upon the supporting documentation submitted as
438 specified in s. 961.05; and

439 (e) Notwithstanding any provision to the contrary in s.
440 943.0583 or s. 943.0585, immediate administrative expunction of
441 the person's criminal record resulting from his or her wrongful
442 arrest, wrongful conviction, and wrongful incarceration. The
443 Department of Legal Affairs and the Department of Law
444 Enforcement shall, upon a determination that a claimant is
445 entitled to compensation, immediately take all action necessary
446 to administratively expunge the claimant's criminal record
447 arising from his or her wrongful arrest, wrongful conviction,
448 and wrongful incarceration. All fees for this process shall be
449 waived.

450

451 The total compensation awarded under paragraphs (a), (c), and
452 (d) may not exceed \$2 million. No further award for attorney's
453 fees, lobbying fees, costs, or other similar expenses shall be
454 made by the state.

455 Section 11. This act shall take effect July 1, 2018.