

1 A bill to be entitled
 2 An act relating to victims of human trafficking;
 3 creating s. 787.061, F.S.; providing a short title;
 4 providing legislative findings and intent; providing
 5 definitions; providing a civil cause of action by
 6 victims of human trafficking or the Florida
 7 Compensation Trust Fund for Survivors of Human
 8 Trafficking against certain persons; providing for
 9 damages, attorney fees, and costs; providing for civil
 10 penalties; providing for civil forfeitures; providing
 11 procedures for forfeiture actions; providing that
 12 actions have no statute of limitations; providing for
 13 initial funding for implementation; providing an
 14 effective date.

15

16 Be It Enacted by the Legislature of the State of Florida:

17 Section 1. Effective upon this act becoming law, section
 18 787.061, Florida Statutes, is created to read:

19 787.061 Civil actions for human trafficking; civil
 20 forfeiture.-

21 (1) SHORT TITLE.-This section may be known as the "Civil
 22 Action Against Human Trafficking Compensation Fund Act."

23 (2) FINDINGS.-The legislature finds that to achieve the
 24 state's goals relating to human trafficking set forth in s.
 25 787.06(1)(d), it is necessary to provide a civil cause of action

26 | for the recovery of compensatory and punitive damages and for
 27 | the civil seizure and forfeiture of the personal and real
 28 | property used by those who engage in the human trafficking of
 29 | persons for sex or labor and those who either knowingly or
 30 | through willful blindness receive profit from or otherwise
 31 | receive direct or indirect economic benefits from such
 32 | trafficking.

33 | (3) DEFINITIONS—As used in this section, the term:

34 | (a) "Claimant" means any party who has proprietary
 35 | interest in property subject to forfeiture under this section
 36 | and has standing to challenge such forfeiture.

37 | (b) "Council" means the Statewide Council on Human
 38 | Trafficking within the Department of Legal Affairs, as created
 39 | by s. 16.617.

40 | (c) "Facilitate" or "facilitator" means assisting or
 41 | providing services to a human trafficker that assist or enable
 42 | the trafficker to carry out human trafficking activity or one
 43 | who provides such assistance or provides such services.

44 | (d) "Forfeiture proceeding" means a hearing or trial in
 45 | which the court or jury determines whether the subject property
 46 | shall be forfeited.

47 | (e) "Fund" refers to the Florida Compensation Trust Fund
 48 | for Survivors of Human Trafficking created in s. 787.0611.

49 | (f) "Human trafficking" has the same meaning as provided
 50 | in section s. 787.06(2).

51 (g) "Trafficker" or "human trafficker" means any person
52 who knowingly, or in willful blindness, engages in human
53 trafficking, attempts to engage in human trafficking, or
54 benefits financially by receiving anything of value from
55 participation in a venture that has subjected a person to human
56 trafficking.

57 (h) "Willful blindness" occurs when a person has her or
58 his suspicion aroused about a particular fact, and realizes its
59 probability, but deliberately refrains from obtaining
60 confirmation of it or acting on it because she or he wants to
61 remain in ignorance, such that knowledge of the fact avoided can
62 reasonably and fairly be imputed to the person who avoided
63 confirming it.

64 (4) CIVIL CAUSE OF ACTION.—

65 (a) A victim of human trafficking has a civil cause of
66 action against the trafficker or facilitator of human
67 trafficking who victimized her or him, and may recover damages
68 for such victimization as provided in this section.

69 (b) The council, on behalf of a victim of human
70 trafficking, has a civil cause of action against the trafficker
71 or facilitator of human trafficking who victimized any person in
72 the state, and may recover on behalf of the fund actual and
73 punitive damages for such victimization. The council may sue
74 generally on behalf of unknown and unnamed victims, and may sue
75 on behalf of known and named victims, or both. Where the council

76 proves damages to a specific individual who was subject to
77 trafficking, the fund shall hold monies for distribution to the
78 victim or her or his guardian or estate, whichever the case may
79 be. If the victim cannot be located then the recovered damages
80 shall be retained by the fund. The council has an obligation to
81 make a good faith attempt to locate the victim and, if the
82 victim cannot be located after such an effort, to distribute the
83 money in the same manner as if the victim had died intestate.
84 Where multiple claims are entitled to payment from the same
85 proceeds but those proceeds are inadequate to pay all claims in
86 full, the fund shall equitably apportion the funds among the
87 claimants.

88 (c) The action may be brought in any court of competent
89 jurisdiction and the standard of proof shall be the
90 preponderance of the evidence.

91 (d) A victim, or the council on behalf of a victim, who
92 prevails in any such action shall be entitled to recover
93 economic and noneconomic damages, penalties, punitive damages,
94 reasonable attorney fees, reasonable investigative expenses, and
95 the costs of the action. The measure of economic damages for
96 lawful work forced from the victim of human trafficking shall be
97 the greater of the fair market value of services provided or the
98 amount realized by the trafficker. The measure of economic
99 damages for every day of captivity shall be the same as that
100 payable to a person entitled to damages under ch. 961. Economic

101 damages of a victim shall also include past and future medical
102 expenses, repatriation expenses where a victim elects
103 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 trafficking.
106 Noneconomic damages shall be calculated as in a tort action.

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

111 (f) In the event a victim or the council prevails in an
112 action under this section, in addition to any other award
113 imposed, the court shall award a civil penalty against the
114 defendant in the amount of \$100,000 and enter judgment thereon
115 in favor of the prevailing victim or the council, whichever was
116 the prevailing party. This penalty shall be in addition to, and
117 not in lieu of, any punitive damage award. The civil penalty
118 shall be assessed by the court and not disclosed to the jury.

119 (g) If a law enforcement agency rescued the victim or
120 located the property upon which the abuse or exploitation of a
121 victim or victims had occurred, the court shall impose a civil
122 penalty against the defendant in the civil action and in favor
123 of the law enforcement agency in the amount of \$50,000 for the
124 benefit of said law enforcement agency's future efforts to
125 combat human trafficking.

126 (5) CIVIL FORFEITURE PROCEEDINGS.—

127 (a) The council may file a civil judicial forfeiture
128 action in the circuit courts of the state seeking a judgment of
129 forfeiture against an owner of real or personal property that
130 was knowingly or through willful blindness used in the
131 trafficking of the victim for sex or labor. The civil forfeiture
132 shall be for the benefit of a victim or the council.

133 (b) Valid and lawful leases, recorded mortgages, or liens
134 of innocent third parties that were in existence prior to the
135 date of the filing of the civil action are not subject to
136 forfeiture, nor is property owned by a good faith purchaser for
137 value.

138 (c) Civil forfeiture actions brought under this section
139 are exempt from the requirements of the Florida Contraband
140 Forfeiture Act, ss. 932.701-932.7062, and shall be governed as
141 provided in this section.

142 (d) If a law enforcement agency of the state or any other
143 party, pursuant to the Florida Contraband Forfeiture Act or as
144 otherwise provided for by law, seeks the forfeiture of the same
145 property as the council, the council's claim shall take priority
146 over the law enforcement agency.

147 (e) The council in a forfeiture proceeding brought under
148 this section must proceed against property to be forfeited by
149 filing a complaint in the circuit court in the jurisdiction
150 where the seizure of the property or the offense occurred,

151 paying a filing fee of \$1,000 and depositing a bond of \$1,500 to
152 the clerk of the court. Unless otherwise expressly agreed to in
153 writing by the parties, the bond shall be payable to the
154 claimant if the claimant prevails in the forfeiture proceeding
155 and in any appeal.

156 (f) The complaint must be styled, "In RE: FORFEITURE OF "
157 (followed by the name or description of the property). The
158 complaint must contain a brief jurisdictional statement, a
159 description of the subject matter of the proceeding, and a
160 statement of the facts sufficient to state a cause of action
161 that would support a final judgment of forfeiture. The complaint
162 must be accompanied by a verified supporting affidavit.

163 (g) The court must require any claimant who desires to
164 contest the forfeiture to file and serve upon the plaintiff any
165 responsive pleadings and affirmative defenses within 20 days
166 after receipt of the complaint.

167 (h) If the property is required by law to be titled or
168 registered, or if the seized property is subject to a perfected
169 security interest in accordance with chapter 679, the Uniform
170 Commercial Code, the council shall serve the forfeiture
171 complaint as an original service of process under the Florida
172 Rules of Civil Procedure and other applicable law to each person
173 having an ownership or security interest in the property. The
174 council shall also publish, in accordance with chapter 50,
175 notice of the forfeiture complaint once each week for 2

176 consecutive weeks in a newspaper of general circulation, as
177 defined in s. 165.031, in the county where the property is
178 located.

179 (i) The complaint must describe the property to be
180 forfeited. If the property to be forfeited has been seized by a
181 law enforcement agency, the complaint must state the county,
182 place, and date of seizure; state the name of the law
183 enforcement agency holding the seized property; and state the
184 name of the court in which the complaint will be filed.

185 (j) The council must make a diligent search and inquiry as
186 to the owner of the subject property, and if, after such
187 diligent search and inquiry, the plaintiff is unable to
188 ascertain any person entitled to notice, the actual notice
189 requirements by mail shall not be applicable.

190 (k) Upon proof by the preponderance of the evidence that
191 the property to be forfeited was used in the trafficking of a
192 person for sex or labor, the court must order the property
193 forfeited to the council. The final order of forfeiture by the
194 court shall perfect in the council right, title, and interest in
195 and to such property, subject only to the rights and interests
196 of bona fide lienholders, and, if applicable, shall relate back
197 to the date of seizure or the filing of a lis pendens.

198 (l) Following an order of forfeiture to the council,
199 subject only to the rights and interests of bona fide
200 lienholders, the property or the proceeds from the sale of such

201 forfeited property shall be transferred to the victim of human
202 trafficking who the property was used in the course of such
203 trafficking up to the extent of his or her individual judgment
204 against the trafficker. In the event multiple victims were
205 subjected to human trafficking and for whom the property was
206 used in the course of such trafficking, the transfer of property
207 or proceeds from sale shall be made on a pro rata share basis.
208 If there are excess or unclaimed proceeds, the council shall
209 deposit the proceeds from sale of such property to fund for the
210 purpose of covering the expenses of the fund, the benefit of
211 other victims of human trafficking, and for the benefit of
212 combating human trafficking.

213 (m) If a claimant prevails at the conclusion of a
214 forfeiture proceeding involving property seized by law
215 enforcement and the council decides not to appeal, any seized
216 property must be released immediately to the person entitled to
217 possession of the property as determined by the court. Under
218 such circumstances, the seizing agency shall not assess any
219 towing charges, storage fees, administrative costs, or
220 maintenance costs against the claimant with respect to the
221 seized property or forfeiture proceeding.

222 (n) If a claimant prevails at the conclusion of a
223 forfeiture proceeding involving seized property, the trial court
224 must require the seizing agency to pay to the claimant the
225 reasonable loss of value of the seized property. If a claimant

226 prevails at trial or on appeal and the seizing agency retained
227 the seized property during the trial or appellate process, the
228 trial court shall also require the seizing agency to pay to the
229 claimant any loss of income directly attributed to the continued
230 seizure of income-producing property during the trial or
231 appellate process. If the claimant prevails on appeal, the
232 seizing agency shall immediately release the seized property to
233 the person entitled to possession of the property as determined
234 by the court, pay any cost as assessed by the court, and may not
235 assess any towing charges, storage fees, administrative costs,
236 or maintenance costs against the claimant with respect to the
237 seized property or the forfeiture proceeding.

238 (o) If the claimant prevails, at the close of forfeiture
239 proceedings and any appeal, the court shall award reasonable
240 trial attorney fees and costs to the claimant if the court finds
241 that the council has not proceeded in good faith. The court may
242 order the council to pay the awarded attorney fees and costs
243 from the fund. This subsection does not preclude any party from
244 electing to seek attorney fees and costs under chapter 57 or
245 other applicable law.

246 (7) STATUTE OF LIMITATIONS.—There shall be no statute of
247 limitations for suits brought pursuant to this section. This
248 subsection applies to any such action other than one which would
249 have been time barred on or before the effective date of this
250 act.

251 Section 2. For the 2017-2018 fiscal year, the sums of
252 \$153,000 in recurring funds and \$29,000 in nonrecurring funds
253 from the Crimes Compensation Trust Fund are appropriated to the
254 Department of Legal Affairs, and 3 full-time equivalent
255 positions are authorized, for the purpose of implementing this
256 act.

257 Section 3. This act shall take effect July 1, 2017.