



2013 ASSEMBLY BILL 681

January 28, 2014 - Introduced by Representatives BILLINGS, JOHNSON, SARGENT, CLARK, GOYKE, HEBL, POPE, BERCEAU, RINGHAND, WACHS, DOYLE, OHNSTAD, KAHL, RICHARDS, ZAMARRIPA, BIES, KOLSTE, YOUNG, PASCH, WEININGER, THIESFELDT and JORGENSEN, cosponsored by Senators HARRIS, RISSER, L. TAYLOR and SCHULTZ. Referred to Committee on Criminal Justice.

- 1 **AN ACT to create** 893.16 (5) (d), 893.575 and 895.438 of the statutes; **relating**
2 **to:** creating a civil cause of action for victims of commercial sexual exploitation.

Analysis by the Legislative Reference Bureau

This bill creates a civil cause of action for a person who is the victim of commercial sexual exploitation. Under the bill, any of the following may be an act of commercial sexual exploitation: human trafficking, sexual exploitation of a child, soliciting a child for prostitution or sex trafficking of a child, possession or production of child pornography, soliciting a prostitute, pandering, or keeping a place of prostitution.

Under the bill, a person who is a victim of an act of commercial sexual exploitation (victim) may bring a civil action against the person who committed the act of commercial sexual exploitation, who recruited victims, or who earned revenue or other compensation as a result of the victim's commercial sexual exploitation (actor) regardless of whether criminal charges are brought or proved against the actor. If the victim prevails in his or her action, he or she may collect actual damages, punitive damages, costs and attorney fees, and any gross revenues earned by the actor related to his or her commercial sexual exploitation of the victim.

The bill prohibits the actor from raising several possible defenses in a civil action, including that the victim willingly engaged in the act of commercial sexual exploitation, that the victim had a consensual sexual relationship with the actor or with another person, that the victim did not attempt to flee or terminate the act of commercial sexual exploitation, that the victim was compensated for his or her acts,

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or that the victim was not physically contacted by the actor or by another participant in the act of commercial sexual exploitation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 893.16 (5) (d) of the statutes is created to read:

2 893.16 (5) (d) Actions for commercial sexual exploitation subject to the time
3 limits of s. 893.575.

4 **SECTION 2.** 893.575 of the statutes is created to read:

5 **893.575 Commercial sexual exploitation.** Actions based on acts of
6 commercial sexual exploitation, as defined in s. 895.438 (1) (a), shall be commenced
7 within 10 years after the cause of action accrues or, if the person entitled to bring an
8 action is a minor, within 10 years after his or her 18th birthday, or be barred.

9 **SECTION 3.** 895.438 of the statutes is created to read:

10 **895.438 Commercial sexual exploitation; action for. (1) DEFINITIONS.** In
11 this section:

12 (a) “Commercial sexual exploitation” means an act that is a violation of s.
13 940.302 and that involves a commercial sex act, or of s. 944.32, 944.33, 944.34,
14 948.05, 948.051, 948.08, or 948.12, whether or not the act has resulted in criminal
15 charges, prosecution, or conviction.

16 (b) “Victim” means any of the following:

17 1. The person who was trafficked for the purpose of committing a commercial
18 sex act, if the act of commercial sexual exploitation is a violation of s. 940.302.

19 2. The person who committed or who was recruited, hired, or paid to commit
20 an act of prostitution, if the act of commercial sexual exploitation is a violation of s.
21 944.32, 944.33, or 944.34.

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1 3. The person who is or was, at the time of the act of commercial sexual
2 exploitation, the child involved if the act of commercial sexual exploitation is a
3 violation of s. 948.05, 948.051, 948.08, or 948.12.

4 **(2) CIVIL CAUSE OF ACTION.** (a) *Cause of action.* A victim has a cause of action
5 against any person who does any of the following:

6 1. Commits an act of commercial sexual exploitation involving the victim.

7 2. Advertises or publishes advertisements for the purpose of recruiting a victim
8 for an act of commercial sexual exploitation.

9 3. Receives money or other compensation as a result of committing an act of
10 commercial sexual exploitation involving the victim.

11 (b) *Remedies.* A victim who brings an action under this section may obtain the
12 following remedies:

13 1. Actual damages.

14 2. Punitive damages.

15 3. Damages in the amount of the gross revenues or value of other compensation
16 received by the defendant from, or related to, his or her act of commercial sexual
17 exploitation involving the victim.

18 4. Injunctive relief in the form of a temporary restraining order, temporary
19 injunction, or injunction ordering the defendant to refrain from perpetrating any
20 further acts of commercial sexual exploitation, or providing any other remedy that
21 is appropriate. Notwithstanding the existence of any claims for monetary damages,
22 a victim may seek injunctive relief against the defendant on an ex parte basis or
23 schedule injunctive relief proceedings on an expedited basis.

24 5. Notwithstanding s. 814.04, reasonable attorney fees and costs of the
25 litigation.

ASSEMBLY BILL 681**SECTION 3**

1 (c) *Effect of criminal judgment.* If there is a final judgment or decree rendered
2 in favor of the state in any criminal proceeding against the defendant arising out of
3 acts enumerated in sub. (1) (a) by the defendant involving the victim, the defendant
4 may not deny the essential allegations of the criminal offense in any civil action or
5 proceeding.

6 (d) *Statute of limitations; tolling.* An action under this section is subject to s.
7 893.575, except that the statute of limitations for an action under this section is
8 tolled during the period beginning with the commencement of a criminal proceeding
9 charging the person with a violation of any statute enumerated in sub. (1) (a) and
10 ending with the final disposition, as defined in s. 893.13 (1), of the criminal
11 proceeding.

12 (e) *Exceptions.* A person is not liable under this section for providing a good or
13 service to the general public, who also provides the good or service to a person who
14 commits an act described in par. (a), unless one the following applies:

15 1. He or she knowingly markets or provides the good or service primarily to a
16 person who commits an act described in par. (a).

17 2. He or she receives greater compensation for the good or service from a person
18 who commits an act described in par. (a) than he or she does from a member of the
19 general public.

20 3. He or she supervises or exercises control of a person who commits an act
21 described in par. (a).

22 (f) *Defenses not available.* It is not a defense to an action brought under this
23 section that:

24 1. The victim and the defendant had a marital or consenting sexual
25 relationship.

