

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1788 (Cunningham)
Version: March 24, 2022
Hearing Date: June 8, 2022
Fiscal: No
Urgency: No
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SUBJECT

Sex trafficking: hotels: actual knowledge or reckless disregard: civil penalty

DIGEST

This bill establishes a cause of action against hotels for failing to report known sexual trafficking within the hotel, as specified, or where an employee benefits from sexual trafficking activity within the hotel, as specified.

EXECUTIVE SUMMARY

Section 52.6 of the Civil Code (Section 52.6) requires certain establishments to post notices regarding resources for witnesses to and victims of human trafficking and slavery. That section also requires rail and bus stations to train their employees in identifying and reporting incidents of human trafficking. The Fair Employment and Housing Act (FEHA) also requires hotel and motel employers to provide at least 20 minutes of training and education regarding human trafficking awareness to their employees, as provided. Both federal and state law authorize actions by victims of human trafficking, and sex trafficking in particular.

Given the incidence of trafficking in hotels and motels, and the desire to expand the authority of local prosecutors to go after entities that perpetrate or facilitate sex trafficking, this bill establishes a cause of action against hotels when sex trafficking occurs within their establishments. The two bases of liability are where a supervisory employee knows of or recklessly disregards sexual trafficking that has occurred, or an employee knowingly benefitted from the sexual trafficking, as provided.

The bill is sponsored by the author. The bill is supported by various organizations, including the American Association of University Women. It is opposed by the American Civil Liberties Union (ACLU) California Action based on concerns of involving law enforcement, lack of clarity on what triggers liability, and the potential to disrupt and harm consensual sex work.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Authorizes an individual who is a victim of human trafficking, peonage, or slavery, as specified, to bring a civil action against the perpetrator or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in such acts, as specified, in an appropriate district court of the United States and may recover damages and reasonable attorneys' fees. (18 U.S.C.S. § 1595(a).)
- 2) Authorizes state attorneys general to bring a civil action against persons engaging in sex trafficking, as specified, on behalf of the residents of the State. (18 U.S.C.S. § 1595(d).)

Existing state law:

- 1) Provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services is guilty of the crime of human trafficking. (Pen. Code § 236.1.)
- 2) Authorizes a victim of human trafficking to bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees and costs, and the plaintiff may be awarded up to three times their actual damages or \$10,000, whichever is greater. In addition, punitive damages may be awarded upon proof of the defendant's malice, oppression, fraud, or duress in committing the act of human trafficking. (Civ. Code § 52.5.)
- 3) Requires specified businesses and establishments to post notices in a conspicuous place near the public entrance of the establishment or in another conspicuous location in clear view of the public and employees where similar notices are customarily posted. (Civ. Code § 52.6.)
- 4) Requires the notices to include specific language regarding a textline and various hotlines to contact if one is aware of or is a victim of human trafficking. The notice must be printed in English, Spanish, and in one other language that is the most widely spoken language in the county where the establishment is located and for which translation is mandated by the federal Voting Rights Act. The Department of Justice is required to create a model notice that may be used by these businesses. (Civ. Code § 52.6.)

- 5) Provides that a business or other establishment that operates intercity passenger rail or light rail stations, or bus stations shall provide at least 20 minutes of training to employees who may interact with, or come into contact with, a victim of human trafficking or who are likely to receive, in the course of their employment, a report from another employee about suspected human trafficking, in recognizing the signs of human trafficking and how to report those signs to the appropriate law enforcement agency. A list of topics that must be covered in such training is further provided. (Civ. Code § 52.6.)
- 6) Subjects businesses that fail to comply with the notice and training requirements of Section 52.6 of the Civil Code to civil penalties. (Civ. Code § 52.6.)
- 7) Provides that nothing in Civil Code Section 52.6 prevents local governing bodies from adopting and enforcing a local ordinance, rule, or regulation to prevent slavery or human trafficking. (Civ. Code § 52.6.)
- 8) Requires hotels and motels to provide at least 20 minutes of classroom or other effective interactive training and education regarding human trafficking awareness to each employee who is likely to interact or come into contact with victims of human trafficking, as specified. A list of topics that must be covered in such training is further provided. (Gov. Code § 12950.3.)

This bill:

- 1) Subjects a hotel to liability for civil penalties and other relief if either or both of the following conditions are met:
 - a) sex trafficking activity occurred in the hotel, a supervisory employee of the hotel either knew of the nature of the activity or acted in reckless disregard of the activity constituting sex trafficking activity within the hotel, and the supervisory employee of the hotel failed to inform law enforcement, the National Human Trafficking Hotline, or another appropriate victim service organization within 24 hours; and/or
 - b) an employee of the hotel knowingly benefited, financially or by receiving anything of value, by participating in a venture that the employee knew or acted in reckless disregard of the activity constituting sex trafficking within the hotel.
- 2) Authorizes a city, county, or city and county attorney, if there is reasonable cause to believe there has been a violation of the above, to bring a civil action for injunctive and other equitable relief. The prosecuting office can also seek civil penalties in the amount of \$1,000 for the first violation in a calendar year, \$3,000 for the second violation within the same calendar year, and \$5,000 for the third and any subsequent violation within the same calendar year.

- 3) Permits a court to increase the amount of the civil penalty up to \$10,000, if after a hearing in open court, it determines the respondent to be an egregious offender for any fourth or subsequent violation, considering all of the following factors:
 - a) the respondent's culpability;
 - b) the relationship between the harm and the penalty;
 - c) the penalties imposed for similar conduct in similar statutes; and
 - d) the respondent's ability to pay.
- 4) Provides that the lack of reporting of a sex trafficking case that occurs in a hotel shall not, by itself, result in the liability of an employer of that establishment to the sex trafficking victim or victims in the case in question or to any other party. A violation, by itself, cannot result in criminal liability against the hotel. Nothing therein affects criminal or civil liability that may arise pursuant to other provisions of law.
- 5) Clarifies that hotel employees cannot be held liable under this bill.
- 6) Defines "hotel" as any operator or management company that offers and accepts payment for rooms, sleeping accommodations, or board and lodging and retains the right of access to, and control of, a dwelling unit that is required to provide training and education regarding human trafficking awareness pursuant to Section 12950.3 of the Government Code.
- 7) Sets a five-year statute of limitations, which runs once a minor victim attains the age of majority, if applicable.

COMMENTS

1. The troubling prevalence of human trafficking

Human trafficking is the world's fastest growing criminal enterprise, bringing in annual profits in the tens of billions of dollars. Human trafficking is generally defined as the use of force, coercion, or fraud to obtain coerced labor or personal services. Existing law provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services is guilty of the crime of human trafficking.

The International Labour Organization estimates that approximately 40 million people were victims of some form of human slavery worldwide in 2016.¹ This includes 24.9 million in forced labor, meaning they were being "forced to work under threat or coercion as domestic workers, on construction sites, in clandestine factories, on farms

¹ *Global Estimates of Modern Slavery* (2017) International Labour Organization, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf. All internet citations are current as of May 16, 2022.

and fishing boats, in other sectors, and in the sex industry.” Over 70 percent of these victims were women and girls and 1 in four victims were children. In their 2019 Data Report, the U.S. National Human Trafficking Hotline (NHTH) identified over 22,000 victims and survivors and over 4,300 traffickers.²

The U.S. State Department has estimated that the incidence of human trafficking and slavery has only gotten worse during the COVID-19 pandemic:

The economic and social distress generated by the pandemic and related mitigation efforts exacerbated risks for vulnerable and marginalized populations. These included women and children, people affected by travel restrictions and stay-at-home orders, communities in areas of food insecurity, and survivors of trafficking, as well as persons directly and indirectly affected by the disruption of economic activities and reduced livelihood options. Due to school closures, some children lacked access to education, shelter, and/or food. Survivors of trafficking faced an increased risk of potential re-victimization due to financial and emotional hardships during the crisis.³

Traffickers look for people who are susceptible for a variety of reasons, including psychological or emotional vulnerability, economic hardship, lack of a social safety net, natural disasters, or political instability. Human trafficking is often described as a hidden crime, as victims rarely come forward to seek help because of language barriers, fear of the traffickers, and/or fear of law enforcement.

2. California’s human trafficking laws and lodging establishments

To increase awareness of human trafficking and provide support to victims, Section 52.6 requires certain businesses and establishments, including truck stops, health facilities, massage parlors, and transit centers, to post notices encouraging victims of human trafficking and those who suspect human trafficking to contact a textline or one of several hotlines to access help and services. The law requires the notice to state specified content in several language and requires the Department of Justice to post a model notice.

AB 260 (Santiago, Ch. 547, Stats. 2017) included hotels, motels, and other lodging establishments among the businesses that must post such signage regarding reporting human trafficking. According to this Committee’s analysis of the bill, this addition was spurred by data from studies and reports conducted nationally that clearly suggested

² 2019 Data Report, U.S. National Human Trafficking Hotline, <https://humantraffickinghotline.org/sites/default/files/Polaris-2019-US-National-Human-Trafficking-Hotline-Data-Report.pdf>.

³ *Trafficking in Persons Report* (June 2021) United States Department of State, <https://www.state.gov/wp-content/uploads/2021/09/TIPR-GPA-upload-07222021.pdf>.

that the human trafficking industry is increasingly run through or making contact with hotels and motels across the country, as well as here in California:

Based on NHTH call data for 2015, of the substantive calls from California dealing with sex trafficking, the trafficking venue with the highest percentage of calls was hotels and motels. In fact, reports suggest that the commercial sex industry has moved off the street and, in large part, into hotels. According to a report on the fight against human trafficking in San Diego, the majority of arrests for these crimes took place in hotels and motels. Even the individuals who are facilitators of these crimes identified hotels and motels as the most common site for commercial sexual activity. A 2012 report by the California Attorney General found that human trafficking can be facilitated by those operating the hotels and motels.

The following year SB 970 (Atkins, Ch. 842, Stats. 2018) took the next step in specifically addressing the issue of human trafficking in hotels and motels, again relying on the overwhelming data suggesting that any successful anti-human trafficking strategy must incorporate hotels and motels and join the growing number of programs being implemented on the federal, state, and local levels that include hotels, motels, and other lodging in the relevant laws. Specifically, SB 970 amended FEHA, adding Section 12950.3 to the Government Code, which required employee trainings at hotels and motels. SB 970 also explicitly stated that it was the intent of the Legislature in enacting the bill “to establish a minimum threshold for human trafficking awareness training and education.”

3. Combatting the incidence of human trafficking in hotels and motels

According to the author:

Human trafficking is the fastest-growing crime in the United States, and it is happening in seedy hotels and motels throughout all parts of California. AB 1788 would give local prosecutors and City Attorneys another tool to fight trafficking and save victims. This important bill makes it clear that California will no longer tolerate hotel and motel operators turning a blind eye towards this type of illegal activity.

This bill imposes liability on hotels in two circumstances. First, liability attaches where a “supervisory employee” knows of or is in reckless disregard of sex trafficking that occurred within the establishment and failed to inform law enforcement, the NHTH, or another appropriate victim service organization within 24 hours. A “supervisory employee” is one that either holds responsibility for duties that are not substantially similar to those of their subordinates; or any individual, regardless of the job description or title, who holds certain authority, in the interest of the employer, and the

exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The second basis for liability is where an employee of the hotel knowingly benefited, financially or by receiving anything of value, by participating in a venture that the employee knew or acted in reckless disregard of the activity constituting sex trafficking within the hotel.

As referenced above, many of the laws regarding notice and training involve hotels and motels. While the bill only uses the term "hotel" it includes a definition that encompasses a broad range of lodging. To maintain consistency and clarity, the author has agreed to amendments that include "motels" in the definition and throughout the bill where "hotels" are mentioned.

This bill bolsters the existing authority to hold entities civilly liable for human trafficking. The federal Trafficking Victims Protection Act (TVPA), 18 U.S.C. § 1581 et seq., provides tools to combat human trafficking. Relevant here, it provides an individual who is a victim of sex trafficking to bring a civil action against the perpetrator or whoever "knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in" sex trafficking. The victim is authorized to recover damages and reasonable attorneys' fees. (18 U.S.C. § 1595(a).) The TVPA also authorizes the Attorney General of an affected state to bring an action against a person that engages in sex trafficking on behalf of the residents of the State to "obtain appropriate relief." (18 U.S.C. § 1595(d).)

In California, a victim of human trafficking, as defined, may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees and costs, as well as treble and punitive damages, as specified. (Civ. Code § 52.5.)

A civil action for enforcement of violations of this bill can only be brought by a city, county, or city and county attorney, who may seek injunctive and other equitable relief. They can also seek civil penalties of \$1,000 for the first violation, \$3,000 for the second violation within the same calendar year, and \$5,000 for the third and any subsequent violations within the same calendar year. For fourth and subsequent violations, the court is also granted discretion to increase the penalty up to \$10,000 based on a consideration of various factors, such as culpability and the defendant's ability to pay. Liability under the bill is imposed on the hotel itself, and the bill specifically provides that no liability arises pursuant to the bill against an employee.

The American Association of University Women California writes in support:

Hotels are required to provide training and education regarding human trafficking awareness. AB 1788 goes a step further by requiring supervisory employees to use that training and education to report sex trafficking when it occurs on the hotel property. The bill provides important civil penalties up to \$5,000 (for a third offense) and \$10,000 (for a fourth or greater offense) for hotels when a supervisory employee is aware of, or recklessly disregards sex trafficking occurring on the hotel property. The measure also imposes civil penalties when such an employee financially or otherwise benefits from sex trafficking occurring on the hotel property.

According to World Population Review (<https://worldpopulationreview.com/>):

California consistently has the highest human trafficking rates in the United States, with 1,507 cases reported in 2019. 1,118 of these cases were sex trafficking cases, 158 were labor trafficking, and 69 were both sex and labor... Most of the sex trafficking cases reported in California were illicit massage and spa businesses and hotel or motel based.

Writing in opposition to the bill, ACLU California Action argues:

AB 1788 continues to center a law enforcement response to human trafficking despite trafficking organizations' calls for public health approaches. The Coalition to Abolish Slavery & Trafficking (CAST), for example, has advocated for "[f]ocusing on human trafficking through a public health lens, as opposed to a criminal justice approach," recognizing that the "public health lens informs who intervenes and engages in the fight against human trafficking" and that "we cannot arrest our way out of human trafficking[.]" A recent report from the USC Gould School of Law International Human Rights Clinic also highlights the over-policing of sex trafficking and the need to utilize community and public health responses to trafficking in commercial sex. While the bill allows calling such organizations, as long as informing law enforcement is listed as one of the options to escape liability, that will seem like the easiest call to make for some hotels and will continue to further a law enforcement response rather than a public health approach to human trafficking.

AB 1788 would also harm sex workers and others who are not sex trafficking victims. By making hotels financially liable for not reporting sex trafficking activity, the bill incentivizes over-reporting by hotels to avoid civil penalties. This will undoubtedly put sex workers at jeopardy as hotels will report any suspected incidents of commercial sex activity

rather than risk penalties of \$1,000 or more. Sex work has been erroneously conflated by some with sex trafficking, further increasing the risk that sex workers will be harmed by this bill.

4. Technical amendments

In order to streamline the provisions establishing the civil action in this bill, the author has agreed to a series of technical amendments that include changing references to respondent with defendant, removing purpose and intent language from Section 52.65(g), and other minor changes.

SUPPORT

American Association of University Women California
California District Attorneys Association
California State Sheriffs' Association
Junior League of Orange County, California
Peace Officers Research Association of California
One individual

OPPOSITION

ACLU California Action
Adult Industry Laborers and Artists Association

RELATED LEGISLATION

Pending Legislation:

AB 1661 (Davies, 2022) includes hair, nail, electrolysis, and skin care businesses, and other related businesses or establishments subject to regulation pursuant to the Barbering and Cosmetology Act among the establishments required to post a notice regarding slavery and human trafficking. This bill is currently in this Committee and is being heard on the same day as this bill.

AB 2553 (Grayson, 2022) establishes the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) to review collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking, among other related duties. The task force must report its findings and recommendations to the Office of Emergency Services, the Governor, the Attorney General, and the Legislature by January 1, 2024. This bill is currently in the Senate pending referral.

Prior Legislation:

SB 630 (Stern, Ch. 57, Stats. 2019) made clear that Section 52.6, and the requirements set out therein, do not prevent local governing bodies from adopting and enforcing a local ordinance, rule, or regulation to prevent slavery or human trafficking.

SB 970 (Atkins, Ch. 842, Stats. 2018) *See* Comment 2.

AB 2034 (Kalra, Ch. 812, Stats. 2018) amended Section 52.6, requiring businesses that operate intercity passenger rail or light rail stations, or bus stations to train certain employees in recognizing the signs of human trafficking and how to report those signs.

SB 225 (Stern, Ch. 565, Stats. 2017) updated language that is required to be included in notices certain businesses must post. It included a special textline that can be texted for services and support.

SB 597 (Leyva, Ch. 570, Stats. 2017) allowed victims of human trafficking to participate in the Secretary of State's Safe at Home program.

AB 260 (Santiago, Ch. 547, Stats. 2017) *See* Comment 2.

AB 1227 (Bonta, Ch. 558, Stats. 2017) required human trafficking prevention education in schools.

SB 1193 (Steinberg, Ch. 515, Stats. 2012) added Section 52.6 to the Civil Code.

PRIOR VOTES:

Assembly Floor (Ayes 65, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)
