SENATE RULES COMMITTEE
Office of Senate Floor Analyses
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THIRD READING

Bill No: AB 1788
Author: Cunningham (R) and Valladares (R), et al.
Amended: 8/24/22 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 6-1, 6/8/22
AYES: Umberg, Borgeas, Gonzalez, Hertzberg, Jones, Laird
NOES: Wiener
NO VOTE RECORDED: Caballero, Durazo, Stern, Wieckowski

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/11/22
AYES: Portantino, Bates, Bradford, Jones, Laird, McGuire, Wieckowski

ASSEMBLY FLOOR: 65-0, 3/31/22 - See last page for vote

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

SOURCE: Author

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.

Senate Floor Amendments of 8/24/22 cabin the latter basis for liability.

ANALYSIS:

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 was acting within the scope of employment and 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 against a hotel for violation of this section. 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 exercise its discretion to increase the amount of the civil penalty up to $10,000 for any fourth or subsequent violation, considering all of the following factors:
   a) the defendant's culpability;
   b) the relationship between the harm and the penalty;
   c) the penalties imposed for similar conduct in similar statutes; and
   d) the defendant'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, without meeting the conditions laid out above, 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 a motel, or any other 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.

Background

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 acting within the scope of employment 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.

Comments

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.

Combatting the incidence of human trafficking in hotels and motels

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, acting within the scope of employment, 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.

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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

According to the Senate Appropriations Committee, "Unknown, potentially-significant workload cost pressures to the courts to adjudicate alleged violations of this measure (Special Fund - Trial Court Trust Fund, General Fund)."

SUPPORT: (Verified 8/23/22)

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: (Verified 8/23/22)

ACLU California Action
Adult Industry Laborers and Artists Association

ARGUMENTS IN SUPPORT: The American Association of University Women California writes:

> "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.

ARGUMENTS IN OPPOSITION: 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.

ASSEMBLY FLOOR: 65-0, 3/31/22
AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Holden, Kalra, Kiley, Lackey, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Mullin, Muratsuchi, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Ramos, Reyes, Luz Rivas, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon
NO VOTE RECORDED: Bryan, Gray, Irwin, Jones-Sawyer, Lee, Medina, Nazarian, Quirk-Silva, Robert Rivas, Rodriguez, Villapudua

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113
8/26/22 15:36:16

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