

CONCURRENCE IN SENATE AMENDMENTS

AB 1788 (Cunningham and Valladares)

As Amended August 24, 2022

Majority vote

SUMMARY

Creates civil penalties for hotels, as defined, for instances of human trafficking that specified employees either knew about, or recklessly disregarded as activity constituting sex trafficking on hotel grounds.

Major Provisions

- 1) Provides that a hotel is subject to civil penalties if either 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 sexual trafficking activity, 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.
- 2) Provides that a hotel is subject to civil penalties if an employee of the hotel who was acting in the scope of their employment knowingly benefited, financially or by receiving anything of value, by participating in a venture that the employee knew consisted of sex trafficking or acted in reckless disregard of the activity constituting sex trafficking within the hotel.
- 3) Provides that a city, county, or city and county attorney with reasonable cause to believe there has been a violation pursuant to the provisions above may bring a civil action for injunctive and other equitable relief. Provides that a city, county, or city and county attorney may 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.
- 4) Grants the court discretion to increase the amount of the civil penalty for a defendant it determines to be an egregious offender, not to exceed \$10,000, for any fourth or subsequent violation, considering factors including the defendant's culpability, the relationship between the harm and the penalty, the penalties imposed for similar conduct in similar statutes, and the defendant's ability to pay.
- 5) Provides that the lack of reporting of a sex trafficking case that occurs in a hotel shall not, by itself, result in liability to an employer of the establishment to the sex trafficking victim or victims in the case in question, or to any other party.
- 6) Provides that no liability for civil penalties shall arise against a hotel employee.
- 7) Provides that a violation of this section alone shall not result in criminal liability against the hotel.
- 8) Provides that the bill does not intend to affect criminal or civil liability that may arise pursuant to other provisions of law.

Senate Amendments

Are technical and nonsubstantive.

COMMENTS

This bill expands the state's attempts to curb human trafficking by creating a new form of liability for hotels, motels, and other similar establishments which may host or otherwise interact with victims of human trafficking.

The bill creates civil liability for hotels for instances when a supervisory employee either knows of, or recklessly disregards, activity that constitutes, sex trafficking. This bill creates new civil liability for hotels, defined 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 provisions of existing law that mandate such training and education. Liability can attach in one of three ways. First, liability may attach when a supervisory employee either knows sex trafficking activity occurred in the hotel, or recklessly disregards *and* fails to report the activity to *either* law enforcement, or a victim services organization. A hotel may also be liable under this section if a supervisory employee who was acting within the scope of employment knowingly benefitted, financially or otherwise, from activity they knew constituted sex trafficking, or acted in reckless disregard of the activity constituting sex trafficking activity. A supervisory employee is defined as any individual who holds authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibilities to direct them, *and* holds responsibilities that are not substantially similar to those of their subordinates.

For example, a hotel chain can be held liable under this section if a manager at one site witnessed an incident, interaction, or individual bearing signs of sex trafficking and did not report it to either law enforcement, the National Human Trafficking Hotline (NHTH), or another victim services organization within 24 hours. Similarly, a hotel may be liable if a non-supervisory employee witnesses the same incident, and after alerting their manager, the manager then fails to notify one of the specified groups.

The bill grants authority to city and district attorneys to bring claims under the section if there is reasonable cause to believe a violation occurred. The prosecuting attorney can seek civil penalties up to \$1,000 for the first violation in a calendar year, \$3,000 for the second violation in the same calendar year, and \$5,000 for the third and any subsequent violation in the same calendar year. The bill also provides discretion for a court to increase penalties up to ten thousand dollars for the fourth or any subsequent violation against defendants that the court determines to be an egregious offender. In order to make a determination regarding whether a defendant constitutes an egregious offender and whether a heightened penalty is warranted, a court would consider various factors including the defendant's culpability, the relationship between the harm and the penalty, other penalties imposed for similar conduct in similar statutes, and whether the defendant would be able to pay the increased penalty. The bill clarifies that the section does not create liability for civil penalties on the part of a hotel employee, nor does a violation of this section alone create criminal liability against the hotel.

Sex trafficking is, undoubtedly, a significant threat to communities around the world, and hotels are uniquely positioned to help identify and prevent it. Previous legislation has identified the same benefit of enlisting hotels in the effort to combat sex trafficking, and the Legislature has

passed numerous measures requiring increased educational and training opportunities for hotel employees related to sex trafficking. Exposing hotels to civil liability for a failure to report suspected instances of sex trafficking would arguably further the goal of preventing sex trafficking activity, as it would incentivize individual establishments to alert the proper organizations in an effort to avoid monetary penalties.

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. ... Effective January 1, 2020, employees of hotels and motels who are likely to interact with victims of human trafficking are required to take 20 minutes of training to help them better identify red flags. Armed with this knowledge, hotels and motels are in unique positions to intervene and help victims of sex trafficking. 75% of sex trafficking survivors report coming into contact with a hotel at some point during their trafficking journey [and] hotel/motel based businesses remain in the top three most used venues for trafficking year after year. This bill will fill the gap in enforcement and give local courts the ability to hold bad actors accountable and deter hotel and motel employees from turning a blind eye.

Arguments in Support

In support of this bill, the California State Sheriffs' Association argues:

Evidence shows that many human trafficking crimes are committed at hotels and motels, as hotels and motels are easy for persons to access and sometimes allow payment in cash. However, the vast majority of this activity goes unreported.

Further, the California District Attorneys Association states:

Hotel and motel-based businesses are a common venue for sex trafficking in California. They are easy to access, accept cash payments, and allow traffickers to operate without overhead. By introducing the threat of civil penalties, AB 1788 will discourage hotel and motel operators from knowingly permit[ting] sex trafficking activities in their establishments and encourage interventions that can break this vicious trade.

Arguments in Opposition

This bill is opposed unless amended by American Civil Liberties Union (ACLU) California Action. They argue that this bill focuses on a law enforcement response to human trafficking, rather than a public health response. Specifically, the ACLU argues that the bill "focuses on criminal justice approaches to human trafficking by holding hotels liable for not reporting to law enforcement suspected instances of human trafficking." Further, ACLU claims that by incentivizing hotels to report instances of suspected human trafficking, this bill would harm sex workers and other individuals who are not victims of trafficking such as domestic violence victims or undocumented individuals.

FISCAL COMMENTS

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)."

VOTES:

ASM JUDICIARY: 9-0-0

YES: Stone, Cunningham, Davies, Holden, Kalra, Kiley, Maienschein, Reyes, Robert Rivas

ASSEMBLY FLOOR: 65-0-11

YES: 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

ABS, ABST OR NV: Bryan, Gray, Irwin, Jones-Sawyer, Lee, Medina, Nazarian, Quirk-Silva, Robert Rivas, Rodriguez, Villapudua

UPDATED

VERSION: August 24, 2022

CONSULTANT: Manuela Boucher-de la Cadena / JUD. / (916) 319-2334

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