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Chapter 515: Combating Human Trafficking by Enhancing Awareness Through Public Postings

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Chapter 515: Combating Human Trafficking by Enhancing Awareness Through Public Postings

Scott Davidson Dyle

Codes Section Affected

Civil Code § 52.6 (new).

SB 1193 (Steinberg); 2012 STAT. Ch. 515.

I. INTRODUCTION

Human trafficking is slavery, depriving persons of their freedom and basic human rights.¹ Human traffickers use “force, fraud or coercion” to compel victims to perform labor or commercial sex acts.² However, it is difficult to identify the perpetrators of human trafficking; neighbors, friends, and family members are just as likely to be traffickers as pimps, pedophiles, and smugglers.³

Mabelle de la Rosa Dann lived in Walnut Creek, California, working as a real estate agent and taking care of her children.⁴ She was of Peruvian descent and traveled to Peru to find a live-in nanny.⁵ Dann hired two Peruvian nationals to smuggle a Peruvian woman, Zoraida Peña Canal,⁶ into the United States when Ms. Peña Canal was unable to obtain a visitor’s visa.⁷ However, rather than achieving a better life, Ms. Peña Canal became a victim of human trafficking.⁸

Dann took Ms. Peña Canal’s passport and identification and convinced her that if she fled, Dann would accuse her of theft.⁹ For almost two years, Ms. Peña

1. CAL. ALLIANCE TO COMBAT TRAFFICKING & SLAVERY TASK FORCE, HUMAN TRAFFICKING IN CALIFORNIA: FINAL REPORT 3, 15 (2007), available at http://oag.ca.gov/sites/all/files/pdfs/publications/Human_Trafficking_Final_Report.pdf [hereinafter TRAFFICKING IN CALIFORNIA] (on file with the *McGeorge Law Review*).

2. *Id.* at 15.

3. See WESTMINSTER POLICE DEPARTMENT ET AL., CA LAW ENFORCEMENT TRAINING ON THE HUMAN TRAFFICKING OF MINORS 4 (explaining that “[n]eighbors,” “[f]riends and family members,” “[o]rganized criminal groups,” “[s]mugglers,” “[p]imps/[m]adams,” “[a]dult entertainment industry providers,” “[m]assage parlor operators,” “[l]abor subcontractors,” “[e]mployment [a]gencies,” “‘Johns,’” “[o]wners of small businesses,” “[g]angs,” “[s]ubcontractors,” and “[p]edophiles” can all be perpetrators of human trafficking).

4. Richard C. Paddock, *Woman Sentenced for Forcing Immigrant to Work Without Pay*, AOL NEWS (Apr. 15, 2010), <http://www.aolnews.com/2010/04/15/woman-sentenced-for-forcing-immigrant-to-work-without-pay/> (on file with the *McGeorge Law Review*).

5. *Id.*; Press Release, U.S. Dep’t of State, Walnut Creek Woman Found Guilty of Trafficking Nanny from Peru (Oct. 9, 2009) (on file with the *McGeorge Law Review*).

6. See *United States v. Dann*, 652 F.3d 1160, 1162 (9th Cir. 2011) (identifying Mabelle de la Rosa Dann’s victim as Zoraida Peña Canal).

7. Press Release, U.S. Dep’t of State, *supra* note 5.

8. See Paddock, *supra* note 4 (describing how Dann forced Canal to provide childcare, cook, and clean for twenty-one months while never being compensated).

9. Press Release, U.S. Dep’t of State, *supra* note 5.

2013 / Civil

Canal was forced into domestic servitude, never being paid for cooking, cleaning, and caring for Dann's two children.¹⁰ This situation would most likely have continued if it were not for community members who helped the victim escape.¹¹

In hopes of keeping atrocities, such as those committed by Mabelle de la Road Dann, from the headlines, Senator Steinberg introduced Chapter 515.¹² Chapter 515 seeks to increase public awareness by requiring specific businesses and establishments post a human trafficking notice detailing that human trafficking is illegal and that there are organizations able to help victims.¹³

II. LEGAL BACKGROUND

Existing California law makes human trafficking a felony.¹⁴ Human trafficking victims can bring a civil action against his or her trafficker for any appropriate relief¹⁵ within five years of being freed; if the victim is a minor, he or she has eight years after attaining the age of majority to file a claim.¹⁶ A trafficking victim retains an evidentiary privilege to refuse disclosure of any confidential communication conveyed to a human trafficking caseworker in any cause of action.¹⁷

Prior to Chapter 515, other, non-enacted legislation would have required certain employers to post information regarding human trafficking.¹⁸ While no California law currently exists requiring specified businesses and establishments to post human trafficking notices,¹⁹ California does require certain businesses and establishments to post specified notices concerning other various issues.²⁰ For

10. *Id.* ("For nearly two years, Dann forced the victim to cook, clean, and take care of Dann's young children . . . [while a]t no point did Dann pay the victim for her work.").

11. *Id.* ("The victim was eventually able to escape, with the assistance of local residents and officials and parents at a local Walnut Creek elementary school.").

12. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1193, at 3 (Apr. 17, 2012) ("While there is a growing awareness among the public about the issue of human trafficking, victims and the public could significantly benefit from a posting at specified businesses and other establishments stating that trafficking victims have rights and that anonymous help lines are available.").

13. CAL. CIV. CODE § 52.6 (enacted by Chapter 515).

14. CAL. PENAL CODE § 236.1 (West 2008 & Supp. 2012).

15. CIV. § 52.5(a) (West 2007) (specifying that a victim may bring a civil action for "actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief").

16. *Id.* § 52.5(c).

17. CAL. EVID. CODE § 1038(a) (West 2009).

18. *See* SENATE APPROPRIATIONS COMMITTEE, FISCAL SUMMARY OF SB 1193, at 2 (May 21, 2012) (discussing SB 1230, 2010 Leg., 2009–2010 Sess. (Cal. 2010)).

19. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1193, at 2 (Apr. 17, 2012) (describing how enactment of Chapter 515 would require certain businesses and establishments post a human trafficking notice on the premises).

20. *See* CAL. BUS. & PROF. CODE § 25658.4 (West 1997 & Supp. 2012) (requiring that a notice regarding prohibited alcohol sales be posted in establishments selling alcohol and describing the requirements for the notice).

McGeorge Law Review / Vol. 44

example, businesses that sell alcohol must post a sign that states it is illegal to sell alcohol to persons under the age of twenty-one and that any minor who purchases or attempts to purchase alcohol may have his or her driver's license suspended.²¹

III. CHAPTER 515

Chapter 515 requires specified businesses and establishments²² to post a human trafficking notice in a “conspicuous place near the public entrance” or a location clearly visible to the public and employees.²³ The notice must be “at least eight and one-half inches by 11 inches in size, written in a 16-point font” and contain information relating to human trafficking, including the phone numbers of and general information concerning hotlines run by anti-human trafficking non-profit organizations.²⁴

The requisite notice must be printed in English, Spanish, and, if applicable, one other language that is widely spoken in the county in which the establishment is located.²⁵ The California Department of Justice (DOJ), by April

21. *Id.*

22. *See* CAL. CIV. CODE § 52.6(a)(1)–(12) (enacted by Chapter 515) (stating that “[o]n-sale general public premises licensees under the Alcoholic Beverage Control Act,” “[a]dult or sexually oriented businesses,” “[p]rimary airports,” “[i]ntercity passenger rail or light rail stations,” “[b]us stations,” “[t]ruck stops,” “[e]mergency rooms within general acute care hospitals,” “[u]rgent care centers,” “[f]arm labor contractors,” “[p]rivately operated job recruitment centers,” “[r]oadside rest areas,” and certain “[b]usinesses or establishments that offer massage or bodywork services for compensation” must post the requisite human trafficking notice).

23. *Id.* § 52.6(a) (enacted by Chapter 515).

24. *Id.* § 52.6(b) (enacted by Chapter 515). Specifically, the notice must state:

“If you or someone you know is being forced to engage in any activity and cannot leave—whether it is commercial sex, housework, farm work, construction, factory, retail, or restaurant work, or any other activity—call the National Human Trafficking Resource Center at 1-888-373-7888 or the California Coalition to Abolish Slavery and Trafficking (CAST) at 1-888-KEY-2-FRE(EDOM) or 1-888-539-2373 to access help and services.

Victims of slavery and human trafficking are protected under United States and California law.

The hotlines are:

- Available 24 hours a day, 7 days a week.
- Toll-free.
- Operated by nonprofit, nongovernmental organizations.
- Anonymous and confidential.
- Accessible in more than 160 languages.
- Able to provide help, referral to services, training, and general information.”

Id.

25. *See id.* § 52.6(c) (enacted by Chapter 515) (specifying that the notice must be printed in one other language where translations are required pursuant to the federal Voting Rights Act). The federal Voting Rights Act requires translations in political subdivisions where a single minority language group represents over five percent of the total voting age population or the group is comprised of more than ten-thousand individuals. 42 U.S.C. § 1973aa-1a(b)(2)(A)(i)(I)–(II) (2006).

2013 / Civil

1, 2013, must develop a model notice that complies with Chapter 515's requirements and make it available to download from the DOJ's web site.²⁶

An entity that is required to, but fails to comply, with these guidelines must pay a \$500 fine for the first offense and \$1,000 fine for each subsequent violation.²⁷ An entity in violation of this statute may receive a notice of noncompliance and has thirty days to correct the violation.²⁸ If the violation is not remedied within thirty days, the Attorney General, district attorney, county counsel, or city attorney may bring an action to impose the aforementioned fines.²⁹

IV. ANALYSIS

It is the government's responsibility to not only prosecute human traffickers, but also to develop methods to actively identify victims of trafficking.³⁰ Effectively protecting victims can be accomplished by creative solutions³¹ that allow law enforcement agents, citizens, and the private and non-profit sector to help identify victims and combat human trafficking.³²

A. *The Potential Benefits of Chapter 515*

Chapter 515 is designed to increase reporting of instances of human trafficking by promoting community awareness through notice posting.³³ Despite the myriad of horrific experiences human trafficking victims suffer, "community members report trafficking far more than the victims themselves."³⁴ In 2011, the National Human Trafficking Resource Center (NHTRC) hotline received 19,247

26. CIV. § 52.6(d) (enacted by Chapter 515).

27. *Id.* § 52.6(e) (enacted by Chapter 515).

28. *See id.* § 52.6(e)(1)–(2) (enacted by Chapter 515) (An action may be brought for a violation of this code if a violating entity is provided "reasonable notice of noncompliance," which allows thirty days to comply, and the violating entity fails to comply.).

29. *See id.* ("A government entity identified in Section 17204 of the Business and Professions Code may bring an action to impose a civil penalty."). Section 17204 of the Business and Professions Code states "[a]ctions for relief . . . shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or a district attorney" or, if certain requirements are met, by a county counsel or city attorney or prosecutor. CAL. BUS. & PROF. CODE § 17204 (West 2008 & Supp. 2012).

30. U.S. STATE DEP'T, TRAFFICKING IN PERSONS REPORT 21 (2012), available at <http://www.state.gov/documents/organization/192587.pdf> [hereinafter TIP REPORT] (on file with the *McGeorge Law Review*).

31. *See id.* at 30 (asserting that countries with limited resources have effectively protected victims by developing creative solutions).

32. *See generally id.* (discussing how different segments of a society can all identify and help protect trafficking victims).

33. *See generally* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1193, at 3 (Apr. 17, 2012) ("While there is a growing awareness among the public about the issue of human trafficking, victims and the public could significantly benefit from a posting at specified businesses and other establishments stating that trafficking victims have rights and that anonymous help lines are available.").

34. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1193, at 3 (Apr. 17, 2012).

McGeorge Law Review / Vol. 44

calls from more than 10,000 people; these calls included tips about possible human trafficking situations, requests for human trafficking survivor services, general information, and much more.³⁵ This call volume is a sixty-four percent increase from 2010.³⁶

Calls to hotlines, such as the NHTRC, “can serve as effective means for identifying victims.”³⁷ Prior to Chapter 515, Washington,³⁸ Texas,³⁹ Vermont,⁴⁰ and Maryland⁴¹ enacted legislation that requires or permits certain establishments to post human trafficking notices.⁴² These laws generally require that the notices provide the NHTRC hotline number, calls remain confidential, and human trafficking is illegal.⁴³

These laws were enacted because calls to anti-human trafficking hotlines are extremely important in the fight against human trafficking;⁴⁴ law enforcement agencies cannot uncover every location in which human trafficking occurs.⁴⁵ Supporters of Chapter 515 indicate that since Texas mandated that establishments with a liquor license post a human trafficking notice, one out of every five calls from Texas to the NHTRC hotline came from a person who learned about the hotline from a mandated posting.⁴⁶

35. NAT’L HUMAN TRAFFICKING RESOURCE CTR., INCREASING AWARENESS AND ENGAGEMENT: STRENGTHENING THE NATIONAL RESPONSE TO HUMAN TRAFFICKING IN THE U.S., at ii (2011) [hereinafter NHTRC] (on file with the *McGeorge Law Review*).

36. *Id.* at 2.

37. TIP REPORT, *supra* note 30, at 28.

38. WASH. REV. CODE § 47.38.080 (West Supp. 2012).

39. TEX. ALCO. BEV. CODE ANN. § 104.07 (West Supp. 2012).

40. VT. STAT. ANN. tit. 13, § 2661 (2011).

41. 2012 Md. Laws 491.

42. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1193, at 2 (Apr. 17, 2012) (specifying Texas, Maryland, and Vermont as states that have enacted human trafficking public posting legislation).

43. *See* 2012 Md. Laws 491 (requiring notices state, in English, Spanish, and any other language required by the federal Voting Rights Act, that people should call the NHTRC hotline, which maintains confidentiality, if a person of someone they know are under certain conditions indicative of human trafficking); TEX. ALCO. BEV. CODE ANN. § 104.07 (requiring the notice state, in English and Spanish, human trafficking is against Texas law, the NHTRC hotline, and that callers may remain anonymous); VT. STAT. ANN. tit. 13, § 2661 (requiring notices state, in English, Spanish, and another language if requested by an employer, the NHTRC hotline, information concerning the hotline, such as that calls remain anonymous and confidential, and directs people to call the hotline if they or someone they know are under conditions indicative of human trafficking). *But see* WASH. REV. CODE § 47.38.080 (stating that the notices may be in a variety of languages and may contain the numbers of toll-free hotlines, including the NHTRC and Washington state office of crime victims advocacy numbers).

44. *See* TIP REPORT, *supra* note 30, at 28 (“[Hotlines] can serve as effective means for identifying victims . . .”).

45. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1193, at 4 (Apr. 17, 2012) (explaining how the isolation and secrecy in which human trafficking thrives limits law enforcement’s knowledge of where human trafficking exists).

46. *Id.*

2013 / Civil

Human trafficking victims are often forced into domestic servitude, commercial sex work, crime, or other labor.⁴⁷ “Because community members regularly initiate hotline cases regarding all types of human trafficking, effective state-based awareness campaigns can make a significant impact on helping people recognize where and how human trafficking may be happening locally.”⁴⁸ NHTRC data indicates that certain industries and establishments are more likely to come into contact with human trafficking victims; increasing awareness in and around those businesses could help increase reporting of human trafficking incidents.⁴⁹ As a result, requiring public postings at specific businesses and establishments, such as transportation hubs, sexually oriented businesses, alcohol retailers, and urgent care centers, has the potential to aid a significant number of victims because human trafficking is most likely to occur at these locations.⁵⁰

B. The Rationale of Chapter 515’s Specification

Proponents of Chapter 515 stress that human trafficking notices must provide contact information for non-governmental organizations because many victims do not speak English⁵¹ and are often wary of government and law enforcement.⁵² The NHTRC hotline offers critical support for victims by “trained human trafficking advocates in more than 170 languages.”⁵³ Chapter 515 supporters believe more victims break free from their traffickers.⁵⁴ Additionally, because victims are more willing to share sensitive information with non-governmental trafficking victim advocates,⁵⁵ the prosecution of human traffickers will be more successful as well.⁵⁶

47. See *TRAFFICKING IN CALIFORNIA*, *supra* note 1, at 16 (“[Trafficking victims] may be involved in agricultural labor, construction labor, hotel and motel cleaning services, illegal transporters, organized theft rings, pornography, prostitution, restaurant services, domestic services, servile marriage (mail-order brides), and sweatshops.”).

48. NHTRC, *supra* note 35, at 14.

49. *Id.*

50. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1193, at 4 (Apr. 17, 2012) (stating that the public is more likely to encounter victims of human trafficking at certain kinds of businesses).

51. *TRAFFICKING IN CALIFORNIA*, *supra* note 1, at 47.

52. *Id.*

53. NHTRC, *supra* note 35, at 1.

54. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1193, at 4 (Apr. 17, 2012) (“This comprehensive list targets businesses where signage is most likely, either directly or indirectly, to aid victims.”).

55. *Id.* at 6–7.

56. See generally *TRAFFICKING IN CALIFORNIA*, *supra* note 1, at 66 (describing how victim cooperation could aid the prosecution of human traffickers by providing valuable evidence).

C. Opposition to Chapter 515

The only opponent of Chapter 515 asserts that requiring certain businesses and non-governmental entities to post a human trafficking notice forces those private establishments to perform the policing duties mandated to the government.⁵⁷ Additionally, any mandated posting should list contact information for state-run agencies, not non-governmental organizations that may have goals with which California citizens and businesses do not agree.⁵⁸

Similar legislation was vetoed in 2010.⁵⁹ While that bill would have required the specific employers post information regarding human trafficking, Governor Schwarzenegger thought this requirement would unduly burden legitimate businesses.⁶⁰ Chapter 515, similarly, will burden legitimate businesses by requiring a conspicuously posted human trafficking notice.⁶¹ While the actual number of businesses and establishments impacted remains uncertain, it is estimated that about 38,000 entities will be required to post the human trafficking notice.⁶² Supporters of Chapter 515 argue that the benefits of increased exposure, such as educating the public and informing victims of their rights, outweighs the burden placed on these entities.⁶³

V. CONCLUSION

Many barriers prevent human trafficking victims from accessing beneficial services.⁶⁴ Victims are often unaware that victim services exist.⁶⁵ As human trafficking is perpetrated amidst the shadows, requiring certain businesses and establishments to conspicuously post a human trafficking notice may raise awareness and educate individuals on the warning signs of human trafficking.⁶⁶

57. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 1193, at 4 (July 3, 2012).

58. *Id.*

59. SENATE APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF SB 1193, at 2 (May 21, 2012).

60. *Id.* (“[T]his measure will burden legitimate businesses while having little to no impact on human slavery. After all, businesses likely to comply with [this] law are not likely to have employees that would benefit from such postings.”).

61. *Cf. id.* (describing how a very similar bill, requiring businesses post a human trafficking notice, was vetoed, in part, because of the burden placed on businesses).

62. *Id.* at 2–3.

63. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1193, at 4 (Apr. 17, 2012) (“This comprehensive list targets businesses where signage is most likely, either directly or indirectly, to aid victims.”).

64. *See generally* TRAFFICKING IN CALIFORNIA, *supra* note 1, at 45–63 (discussing the difficulties of combating human trafficking and aiding victims, including, funding shortages, language barriers, and victims’ lack of knowledge about where to find help).

65. *Id.* at 47.

66. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1193, at 4 (Apr. 17, 2012) (stating that “human trafficking thrives on isolation and secrecy”, and that postings could serve to educate

2013 / Civil

These notices will bring awareness to the general public and, in turn, that awareness will lead to more tips to law enforcement.⁶⁷ A public posting, informing both victims and the general public that human trafficking is a crime, victims have rights, and there are non-governmental organizations willing to assist victims, is a significant step in combating human trafficking.⁶⁸

victims and notify traffickers that they can face serious repercussions for their conduct).

67. See generally TIP REPORT, *supra* note 30, at 21 (asserting that victim identification can be increased if there is more training and education for law enforcement); ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 1193, at 3 (July 3, 2012) (“The public lacks understanding about human trafficking and could benefit from information on where to report suspicious instances.”).

68. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1193, at 1, 3–4 (Apr. 17, 2012) (asserting that a public notice concerning human trafficking will raise awareness of the crime, which will increase the reporting of human trafficking, thus decreasing the crime’s prevalence).