

LAWS OF DELAWARE
VOLUME 84
CHAPTER 211
152nd GENERAL ASSEMBLY
FORMERLY
SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 43

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE DISPLAY OF HUMAN TRAFFICKING PUBLIC AWARENESS SIGNS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 787, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating Delaware Code provisions accordingly:

§ 787. Trafficking an individual, forced labor and sexual servitude; class D felony; class C felony; class B felony; class A felony.

(a) For the purposes of this section, ~~the following definitions shall apply:~~ section:

(2) “Adult entertainment establishment” means as defined in § 1602 of Title 24.

(3) “Along a major highway” means abutting Interstate 95, Interstate 295, Interstate 495, Route 1, Route 9, Route 13, Route 40, Route 113, Route 141, or Route 202.

(4) “Bar” means “cabaret”, “taproom”, or “tavern”, as defined in § 101 of Title 4.

(5) “Casino” means “video lottery agent”, as defined in § 4803 of Title 29.

(9) “Department” as used in subsection (l) of this section, means the Department of Labor, unless a different Department is specified by name.

(10) “Establishment” means an individual, partnership, limited liability company, corporation, firm, trust, association, society, or other entity engaged in a business, industry, profession, trade, or other enterprise, including a nonprofit entity, with a physical premises open to employees or the public in the State of Delaware.

(12) “Hotel” means “hotel”, “motel”, or “tourist home”, as defined in § 2301 of Title 30.

(17) “Massage establishment” means as defined in § 5302 of Title 24.

(20) “Public awareness sign” as used in subsection (l) of this section, means the sign created under paragraph (k)(3)e. of this section or a sign created by an establishment that meets all of the following requirements:

a. Is at least 8 inches wide by 11 inches long.

b. Contains at least all of the information required to be in a sign under paragraph (k)(3)e. of this section.

c. Meets any other requirements established by regulation.

(21) “Residential child care facility” means as defined in the Office of Child Care Licensing regulations promulgated under Chapter 30A of Title 14.

(22) “Restaurant with a liquor license” means a “restaurant”, as defined in § 101 of Title 4, with a “license”, as defined in § 101 of Title 4.

(26) “Shopping mall” means an enclosed indoor retail complex containing a variety of shops and restaurants, whether contained in a series of connected or adjacent buildings or in a single large building, and usually anchored by department stores.

(29) “Wellness center” means an urgent care clinic, walk-in health clinic, school-based health center, as defined in § 3571G of Title 18, substance abuse treatment clinic, psychiatric treatment facility, family planning clinic, or community health clinic.

(l) Display of public awareness sign; civil penalty for failure to display.

(1)a. Display of a public awareness sign in State of Delaware facilities. ~~The Delaware Department of Transportation shall display a public awareness sign required by this section~~ public awareness sign in every State of Delaware-operated transportation station, rest area, and welcome center in the State which is open to the public.

b. The Department of Health and Social Services shall display a public awareness sign in every State of Delaware Service Center and wellness center that is operated by the Department of Health and Social Services.

c. The Department of Services for Children, Youth and Their Families shall display a public awareness sign in every residential child care facility that is operated by the Department of Services for Children, Youth and Their Families.

(2)a. A public awareness sign ~~created under paragraph (k)(3)e. of this section shall~~ must be displayed at locations designated by the Council in a place that is clearly conspicuous and visible to employees. These locations must include in an establishment within a category designated by the Delaware Anti-Trafficking Action Council (Council) and within all of the following categories:

1. ~~adult~~ Adult entertainment facilities; establishment.
2. ~~entities~~ Entity found to be maintaining a criminal nuisance involving prostitution under § 7104 of Title ~~10, 10.~~
3. ~~job~~ Job recruitment ~~centers,~~ center.
4. ~~hospitals,~~ and Hospital.
5. ~~emergency care providers.~~ [Repealed.]
6. Wellness center other than those covered in paragraph (l)(1)b. of this section.
7. Shelter or residential service designed to serve victims of domestic violence or sexual assault, or individuals experiencing homelessness or food insecurity.
8. Residential child care facility other than those covered in paragraph (l)(1)c. of this section.
9. Independent and transitional living service provider for youth aging out of foster care.
10. Hotel.
11. Convenience store along a major highway.
12. Gas station along a major highway.
13. Casino.
14. Restaurant with a liquor license.
15. Poultry processing plant.
16. Bus or train station other than those covered in paragraph (l)(1)a. of this section.
17. Bar.
18. Massage establishment.
19. Shopping mall.

b.1. The Council may promulgate regulations to designate a category of establishments that must display a public awareness sign in addition to those categories identified in paragraph (l)(2)a. of this section.

2. The Council may promulgate regulations to designate a specific location on the premises for a category of establishments where a public awareness sign must be displayed. If the Council designates a specific location, the Council shall include the specific location requirement within the list under paragraph (l)(2)d. of this section.

c. The Council may promulgate regulations to change the requirements as to what constitutes a public awareness sign so long as the regulations are consistent with paragraph (k)(3)e. of this section and subsection (a) of this section. If the Council promulgates regulations under this paragraph (l)(2)c., the Executive Director of the Council, or their designee, shall inform the Director of the Department's Division of Industrial Affairs, Office of Labor Law Enforcement of the changes.

d. The Council shall ~~approve~~ publish a list of ~~locations~~ categories of establishments that must display a public awareness sign on an annual ~~basis.~~ basis for notification and outreach purposes. The publication must occur in all of the following:

1. A newspaper with statewide circulation.
2. The Register of Regulations.
3. Department website.

e.1. Except as otherwise provided in (l)(2)e.2. through (l)(2)e.8. of this section, an establishment shall display a public awareness sign in a place that is clearly conspicuous and visible to employees and the public. To comply with the requirement that a public awareness sign be clearly conspicuous and visible to employees and the public, an establishment may need to display a public awareness sign at more than one location on its premises.

2. An establishment with a location on its premises designated by the Council through promulgation of regulations under paragraph (l)(2)b.2. of this section shall comply with the specific location requirement. If the establishment does not have that specific location on its premises, then the establishment shall display the public awareness sign as described in paragraph (l)(2)e.1. of this section unless the regulations state otherwise.

3. An establishment that is a hotel may not be required to display a public awareness sign in guest bedrooms. However, a public awareness sign must be displayed in a manner that is clearly conspicuous and visible in all public restrooms, all staff breakrooms, and at least one of the following publicly accessible locations that is present on the premises:

- A. All lobbies.
- B. All elevators.
- C. All stairwells.
- D. All vending machine or ice machine areas.

4. An establishment that is a restaurant with a liquor license must display a public awareness sign in a manner that is clearly conspicuous and visible in all staff breakrooms, or if no staff breakrooms, where clearly conspicuous and visible to employees.

5. An establishment that is a poultry processing plant must display a public awareness sign in a manner that is clearly conspicuous and visible in all staff breakrooms, or if no staff breakrooms, where clearly conspicuous and visible to employees.

6. An establishment that is a casino must display a public awareness sign in a manner that is clearly conspicuous and visible in all public restrooms, all staff breakrooms, and all lobbies.

7. An establishment that is a massage establishment must display a public awareness sign in a manner that is clearly conspicuous and visible in all staff breakrooms, or if no staff breakrooms, where clearly conspicuous and visible to employees.

8. An establishment that is a shopping mall must display a public awareness sign in a manner that is clearly conspicuous and visible in all food courts and all public restrooms provided by the management of the shopping mall.

f. The Executive Director of the Council, or their designee, shall oversee the distribution of public awareness signs to State of Delaware facilities and establishments. The public awareness signs must be provided free of cost to all State of Delaware facilities and establishments that request them.

~~(3) The Delaware Department of Labor shall impose a fine of \$300 per violation on an employer that knowingly fails to comply with paragraph (k)(3)e. of this section. The fine is the exclusive remedy for failure to comply. The Department may enforce the public awareness sign requirements in paragraphs (l)(2)a. and (l)(2)e. of this section, as well as determine whether a sign not distributed by the Council satisfies the definition of “public awareness sign” under subsection (a) of this section, using the rules and procedures of the Administrative Procedures Act, Chapter 101 of Title 29.~~

(4)a. The Department may conduct an inspection of an establishment following receipt of a complaint alleging that the establishment is noncompliant with public awareness sign requirements. If the Department conducts an inspection and confirms that the establishment has failed to comply with 1 or more public awareness sign requirements, the Department shall provide the establishment with public awareness signs, if needed, and written notice of all the following:

1. What noncompliance has occurred, including a citation to the specific law or regulation with which the establishment has not complied.
2. The date the Department inspected and determined there was noncompliance.
3. The possible civil penalties for noncompliance.
4. A prominently displayed statement that this notice serves as a warning.

b. If, within 3 years from the postmark date or date of hand delivery of the warning notice under paragraph (l)(4)a. of this section, the Department determines the establishment is exhibiting the same, or a substantially similar, noncompliance that was identified in the warning notice under paragraph (l)(4)a. of this section, then the Department shall assess a civil penalty against the noncompliant establishment. The Department shall provide the noncompliant establishment with public awareness signs, if needed, and written notice of all the following:

1. What noncompliance has occurred, including a citation to the specific law or regulation with which the establishment has not complied.

2. The dates the Department inspected and determined there was noncompliance.

3. The postmark or hand delivery date of the warning notice under paragraph (l)(4)a. of this section.

4. Whether this is a first or subsequent violation.

5. The civil penalty assessed.

6. That the owner of the establishment may file an appeal, including instructions on how to request a hearing.

c.1. A request for a hearing must be made in writing, addressed to the Secretary of the Department (Secretary), and made within 10 business days from the postmark date or the date of hand delivery of the notice under paragraph (l)(4)b. of this section.

2. If a hearing is not requested under paragraph (l)(4)c.1. of this section, the determination made by the Department under paragraph (l)(4)b. of this section is final.

3. The Department shall review a request for a hearing under paragraph (l)(4)c.1. of this section to determine if the dispute can be resolved at an informal settlement conference. If the Department determines a dispute cannot be resolved at an informal settlement conference or if the Department holds an informal settlement conference and a settlement is not reached, the Department shall forward the hearing request to the Secretary to schedule a hearing.

4. The Secretary shall issue a final case decision at the conclusion of a hearing held under paragraph (l)(4)c. of this section as required under Chapter 101 of Title 29.

5. An establishment owner may seek judicial review of the Secretary's final case decision by commencing an action in Superior Court within 30 days of the date of the final decision under paragraph (l)(4)c.4. of this section.

d. The notices required under paragraphs (l)(4)a. and (l)(4)b. of this section may be hand delivered or mailed to the noncomplying establishment.

e. The notice under paragraph (l)(4)a. of this section is not a case decision for purposes of the Administrative Procedures Act, Chapter 101 of Title 29.

f. All civil penalties collected under this subsection must be paid to the State of Delaware General Fund.

g. If the Council becomes aware of potential noncompliance with the public awareness sign requirements, the Executive Director of the Council, or their designee, shall report the potential noncompliance to the Director of the Department's Division of Industrial Affairs, Office of Labor Law Enforcement and the Department may conduct an inspection.

h. The Department has the same authority under this subsection as in § 107 of Title 19.

i. Nothing in this subsection may be interpreted to prevent the Department from initiating its own inspections into an establishment's compliance with the public awareness sign requirements independent of a report from the Council or a complaint.

(5) The civil penalties for noncompliance with the public awareness sign requirements in paragraphs (l)(2)a. and (l)(2)e. of this section or for failure to use a sign that satisfies the definition of "public awareness sign" under subsection (a) of this section are as follows:

a. If an establishment does not correct the same, or a substantially similar, noncompliance identified in the warning notice under paragraph (l)(4)a. of this section, the establishment owner is subject to a civil penalty of not more than \$500.

b. On a second or subsequent failure by an establishment to correct the same, or a substantially similar, noncompliance identified in the warning notice under paragraph (l)(4)a. of this section, the establishment owner is subject to a civil penalty of not more than \$2,500.

(6)a. The Department shall submit to the General Assembly and the Council an annual written report that contains all of the following information:

1. Number of inspections conducted by the Department to check compliance with the public awareness sign requirements in paragraphs (l)(2)a. and (l)(2)e. of this section, as well as determine whether a sign not distributed by the Council satisfies the definition of "public awareness sign" under subsection (a) of this section.

2. Number of warning notices under paragraph (l)(4)a. of this section issued by the Department, disaggregated by category of establishments.

3. Number of noncompliance notices under paragraph (l)(4)b. of this section issued by the Department, disaggregated by first, second, and subsequent violations and further disaggregated by category of establishments.

4. Total amount of civil penalties collected by the Department from enforcement of subsection (l) of this section.

b. For purposes of submitting the report to the General Assembly, the Department shall submit the report to the Secretary of the Senate, Chief Clerk of the House, the Director and Librarian of the Division of Research, and the Controller General of the Office of the Controller General.

c. The Department shall submit its report by December 1 of each year, beginning [the first December 1 after this Act is implemented]. If the deadline falls on a weekend or State holiday, then the report is due by the State of Delaware's next following business day.

Section 2. This Act is effective immediately and is to be implemented 1 year from the date of this Act's enactment.

Section 3. The Department of Labor may promulgate regulations regarding enforcement of this Act.

Section 4. This Act is known as the "Signs of Hope Act".

Approved September 14, 2023