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Walsh, Wilson; Reps. Baumbach, Collins, Heffernan,  
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DELAWARE STATE SENATE  
152nd GENERAL ASSEMBLY

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 of Delaware 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.

52 5. emergency care providers. [Repealed.]

53 6. Wellness center other than those covered in paragraph (l)(1)b. of this section.

54 7. Shelter or residential service designed to serve victims of domestic violence or sexual assault, or  
55 individuals experiencing homelessness or food insecurity.

56 8. Residential child care facility other than those covered in paragraph (l)(1)c. of this section.

57 9. Independent and transitional living service provider for youth aging out of foster care.

58 10. Hotel.

59 11. Convenience store along a major highway.

60 12. Gas station along a major highway.

61 13. Casino.

62 14. Restaurant with a liquor license.

63 15. Poultry processing plant.

64 16. Bus or train station other than those covered in paragraph (l)(1)a. of this section.

65 17. Bar.

66 18. Massage establishment.

67 19. Shopping mall.

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

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

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

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

82                   1. A newspaper with statewide circulation.

83                   2. The Register of Regulations.

84                   3. Department website.

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

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

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

97                   A. All lobbies.

98                   B. All elevators.

99                   C. All stairwells.

100                  D. All vending machine or ice machine areas.

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

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

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

109                  7. An establishment that is a massage establishment must display a public awareness sign in a  
110 manner that is clearly conspicuous and visible in all staff breakrooms, or if no staff breakrooms, where clearly  
111 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 paragraphs (k)(3)e. of this section. The fine is the exclusive remedy for failure to comply.~~ Subject to paragraph (l)(4)i. of this section, the Department shall 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. Following an inspection in which the Department makes an initial determination that an establishment has failed to comply with 1 or more public awareness sign requirements, the Department shall notify the establishment, in writing, of all of 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 and that if the establishment does not correct the noncompliance within 30 days of the postmark date or date of hand delivery, then the owner of the establishment will be subject to a civil penalty for noncompliance.

b. If an establishment does not correct the noncompliance identified in the warning notice under paragraph (l)(4)a. of this section within 30 days from the postmark date or date of hand delivery, the Department shall notify the establishment, in writing, of all of 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.

142                   5. The civil penalty assessed.

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

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

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

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

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

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

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

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

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

165                   g. If the Council becomes aware of potential noncompliance with the public awareness sign requirements,  
166                   the Executive Director of the Council, or their designee, shall report the potential noncompliance to the Director of  
167                   the Department's Division of Industrial Affairs, Office of Labor Law Enforcement and the Department shall  
168                   conduct an inspection. This paragraph (l)(4)g. does not prohibit the Department from initiating its own inspections,  
169                   independent of the Council.

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

i.1. If the requirements for a public awareness sign are changed through regulation promulgated under paragraph (l)(2)c. of this section and the Department determines during an inspection that an establishment's sign would have been in compliance with the previous definition of "public awareness sign" but is not in compliance with the current definition of "public awareness sign", then the Department shall provide the changes in writing to the establishment, either by mail or hand delivery. The information described in this paragraph (l)(4)i.1. is not a notice under paragraph (l)(4)a. or (l)(4)b. of this section, nor is it a case decision for purposes of the Administrative Procedures Act, Chapter 101 of Title 29.

2. The establishment has 180 days to either create a sign that complies with the current definition of "public awareness sign" under subsection (a) of this section or to obtain a free public awareness sign from the Council under paragraph (l)(2)f. of this section.

(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 noncompliance identified in the warning notice under paragraph (l)(4)a. of this section within 30 days from the postmark date or the date of hand delivery, 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.

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

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

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

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

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

#### SYNOPSIS

This Act adds additional State facilities and categories of establishments to § 787 of Title 11 which would be required to display public awareness signs about human trafficking. The additional State facilities and categories are as follows:

- (1) State service centers.
- (2) Wellness centers.
- (3) Residential child care facilities.
- (4) Transitional and independent living service providers for youth aging out of foster care.
- (5) Shelters for victims of domestic violence or sexual assault or individuals experiencing homelessness or food insecurity.
- (6) Hotels.
- (7) Convenience stores along a major highway.
- (8) Gas stations along a major highway.
- (9) Casinos.
- (10) Restaurants with liquor licenses.
- (11) Poultry processing plants.
- (12) Bus or train stations.
- (13) Bars.
- (14) Massage establishments.
- (15) Shopping malls.

This Act provides definitions of some of the existing State facilities and categories of establishments where public awareness signs are required to be displayed, as well as some of the new State facilities and categories added by this Act. This Act repeals the requirement to display public awareness signs at "emergency care providers" and "adult entertainment facilities" in favor of using the terms "wellness center" and "adult entertainment establishment", which are defined in this Act.

This Act also includes specific locations on the premises where establishments that are hotels, casinos, restaurants with liquor licenses, poultry processing plants, massage establishments, and shopping malls must display a public awareness sign.

This Act adjusts the process by which the Delaware Anti-Trafficking Action Council (Council) may designate establishments required to display public awareness signs. This Act allows the Council to promulgate regulations to do all of the following:

- (1) Designate other categories of establishments that must display public awareness signs in addition to the categories required under § 787 and this Act.
- (2) Designate a specific location on the premises for a category of establishments where a public awareness sign must be displayed.
- (3) Change requirements for what must be included in a "public awareness sign", as defined in this Act.



The Act requires that the Council shall annually publish a list of categories of establishments that must display a public awareness sign and any specific location requirements for the purposes of providing notice.

This Act makes the following clarifications:

(1) The Department of Labor currently enforces the public awareness sign display requirement under § 787 through issuance of a fine. This Act clarifies that the fine is a civil penalty.

(2) This Act distinguishes between the responsibilities of the Council and establishments, as well as rewrites the responsibilities to clarify the current law regarding the display of public awareness signs.

This Act also establishes an enforcement process, including the requirement that establishments will receive a warning before any civil penalties are assessed. If an establishment does not correct the noncompliance identified in its warning, the establishment owner is subject to a civil penalty of not more than \$500. On a second or subsequent failure by an establishment to correct the same or a substantially similar noncompliance, the establishment owner is subject to a civil penalty of not more than \$2,500. The current fine under § 787 is \$300 per violation. Additionally, in the event that the Council changes what must be in a public awareness sign through the promulgation of regulations, this Act creates a safe harbor so a change in the rules does not immediately result in an establishment being in noncompliance. The Department of Labor may promulgate regulations.

This Act also requires the Department of Labor to submit an annual report about enforcement to the Council and the General Assembly.

To make compliance with and enforcement of this Act feasible, a fiscal note is attached to this bill to finance the creation of the public awareness signs, which will be provided free to State of Delaware facilities and establishments that request them. Additionally, the fiscal note will fund positions within the Department of Labor to enforce the human trafficking public awareness sign display requirements.

This Act takes effect immediately and is to be implemented 1 year from the date of this Act's enactment to allow for the promulgation of regulations by the Department of Labor and the Council, as well as to ensure public awareness signs will be ready for distribution before implementation.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Richardson