
CITY OF BALTIMORE

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Mayor



DEPARTMENT OF LAW
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August 31, 2021

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 21-0095 – Labor Trafficking – Notice Requirements

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0095 for form and legal sufficiency. The bill would require certain contractors with the City to place a notice regarding the human-trafficking prevention hotline in certain locations; provide that certain contractors may obtain the required notices from the United States Department of Homeland Security’s Blue Campaign Website and provide for certain penalties.

To raise awareness and combat the problem of human trafficking, the City may require that these signs be posted in places where victims of human trafficking are likely to be present. City Charter, Art. II, §§ (27), (47) (The City Council may “exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise that power within the limits of Baltimore City,” and may “pass any ordinance, not inconsistent with the provisions of this Charter or the laws of the State, which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City.”).

State law currently requires the posting of similar notices in rest areas, welcome centers and transportation centers, bus stations, truck stops, adult entertainment establishments, and in certain hotels where crimes related to human trafficking have occurred. Md. Code, Trans., § 8-655; Bus. Reg., §§ 15-207, 19-103.

Requiring contractors to post information may raise potential First Amendment issues. However, whether this particular disclosure is compelled speech has not yet been directly addressed by the courts. Although the Attorney General has advised that this type of disclosure would be commercial speech, which lessens the legal hurdle the law would be required to surpass, recent cases suggest that this disclosure could be considered noncommercial, subject to a strict

scrutiny analysis. *See, e.g.*, May 18, 2010, Letter of the Attorney General to the Honorable Martin O'Malley (noting that courts have merely required a reasonable relationship between the government interest and the disclosure in the commercial context, but the compelled endorsement of a particular viewpoint would be different); *c.f.*, *Masonry Building Owners of Oregon v. Wheeler*, 394 F.Supp.3d 1279, 1298 (D. Or. 2019) (requirement of posting of signs warning of unsafe nature of building deemed noncommercial speech); *PSEG Long Island v. Town of North Hempstead*, 158 F. Supp. 3d 149, 164-65 (E.D. N.Y. 2016) (mandatory posting of warning signs on utility poles not commercial speech).

Therefore, although the bill is vulnerable on these grounds, the courts have not yet decided the issue. Generally speaking, if the goal is to raise awareness of an uncontroversial topic, as it is here, the disclosure will be upheld if reasonably related to the government interest. *See, e.g.*, *American Meat Institute v. United States Department of Agriculture*, 760 F.3d 18, 26 (D.C.Cir. 2014) (required disclosure of country-of-origin information about meat products upheld).

Assuming that data reveals that these worksites are frequented by human trafficking victims, there would be the necessary nexus between the requirement and the government interest to raise awareness. The Law Department recommends bolstering the legal sufficiency of the bill with further information concerning these types of construction sites and how they have been historically places where victims of human trafficking pass. This will increase the likelihood that a court will find a connection between the purpose of the bill and the required disclosure.

However, an amendment is needed: Section 26A-5 on page 4, lines 10-13 must be deleted from the bill because the Mayor and City Council is only authorized to impose civil and criminal fines and penalties. City Charter, Art. II § (48).

Subject to the above, the Law Department approves the bill for form and legal sufficiency.

Sincerely,



Ashlea Brown
Assistant Solicitor

cc:

Matt Stegman
Nina Themelis
Nikki Thompson
Elena DiPietro
Hilary Ruley
Victor Tervalá