



IDENTIFYING “BUSINESSES AND OTHER ESTABLISHMENTS” SUBJECT TO CALIFORNIA CIVIL CODE § 52.6’S POSTING REQUIREMENT

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I. INTRODUCTION

California Civil Code § 52.6 (“Section 52.6”) enumerates twelve categories of “businesses and other establishments” that, as of April 1, 2013, must post a notice that complies with the requirements of the section (the “Notice”).¹ The Notice provides the public and employees with information about two human trafficking support hotlines operated by the Coalition to Abolish Slavery & Trafficking (“CAST”) and the National Human Trafficking Resource Center (the “NHTRC”). In this memorandum, CAST provides an analysis of the categories enumerated in Section 52.6 and explains how to identify the specific “businesses and other establishments” that must post the Notice (hereafter the “specified businesses and establishments”) using reliable, publicly available sources. In addition to this memorandum, another helpful resource for identification efforts is the CAST presentation entitled “Cal. Civ. Code Section 52.6: Roadmap for Identifying Businesses and Establishments Required to Post Notices.” This memorandum summarizes the research efforts of CAST and is not intended as legal advice for other parties, rather it is an informational resource that groups can use to assist in their respective identification efforts statewide.

¹ The Notice must be posted in English, Spanish, and “one other language that is the most widely spoken language in the county where the establishment is located and for which translation is mandated by the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), as applicable.” Section 52.6(c). Further, it must be posted “in a conspicuous place near the public entrance of the establishment or in another conspicuous location in clear view of the public and employees where similar notices are customarily posted.” Section 52.6(a).

II. ANALYSIS

A. Categories of “Businesses and Other Establishments” Identified in Section 52.6

Section 52.6 mandates that the following businesses and other establishments post the Notice:

1. On-sale general public premises licensees under the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code);
2. Adult or sexually oriented businesses, as defined in subdivision (a) of Section 318.5 of the Penal Code;
3. Primary airports, as defined in Section 47102(16) of Title 49 of the United States Code;
4. Intercity passenger rail or light rail stations;
5. Bus stations;
6. Truck stops. For purposes of this section, “truck stop” means a privately owned and operated facility that provides food, fuel, shower or other sanitary facilities, and lawful overnight truck parking;
7. Emergency rooms within general acute care hospitals;
8. Urgent care centers;
9. Farm labor contractors, as defined in subdivision (b) of Section 1682 of the Labor Code;
10. Privately operated job recruitment centers;
11. Roadside rest areas; and
12. Businesses or establishments that offer massage or bodywork services for compensation and are not described in paragraph (1) of subdivision (b) of Section 4612 of the Business and Professions Code.

B. The “Businesses and Other Establishments” Specified By Each Category

We present below our analysis of the statutory language defining each category of businesses and other establishments required to post the Notice pursuant to Section 52.6. Where information about the entities in a category is publicly available from a reliable source, we explain how to access that information. Where the boundaries of a category are

less clear or a reliable data source is not publicly available, we indicate the issues we encountered in identifying the businesses and establishments and provide as much information as possible to assist further identification attempts. For many categories, we expect this analysis can serve as an exemplar of identification methodologies that groups working to implement Section 52.6 can replicate in their respective areas as one part of larger efforts to identify entities subject to the statute in their areas.

1. On-Sale General Public Premises Licensees

Section 52.6 specifies that “on-sale general public premises licensees under the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code)” must post the Notice.

On-sale general public premises licensees are holders of “a license, a permit, a certification, or any other authorization” issued by the Department of Alcoholic Beverage Control that are “maintained and operated for the selling or serving of alcoholic beverages to the public for consumption on the premises, and in which food [is] not [] sold or served to the public as in a bona fide eating place, [although] food products may be sold or served incidentally to the sale or service of alcoholic beverages” Bus. & Prof. Code §§ 23000-23044. Note that this category does not include liquor stores or restaurants.

On-sale general public premises can be identified using the California Department of Alcoholic Beverage Control’s searchable database of license-holders, available at <http://www.abc.ca.gov/datport/SubscrMenu.asp>. Under “Ad-Hoc reports” at the bottom of the page, select “Query by City and License Type information.” Select a city in your county (you must run a separate search for each city) and License *Type 48 – On-Sale General Public Premises*. Click “Continue.” Each search will generate a list of on-sale general public premises licensees in the selected city that includes the licensees’ addresses and business names. It appears that the searchable database is updated regularly.

2. Adult or sexually oriented businesses, as defined in subdivision (a) of Section 318.5 of the Penal Code.

Under the California Penal Code, an “adult or sexually oriented business’ includes any establishment that regularly features live performances which are distinguished or characterized by an emphasis on the exposure of the genitals or buttocks of any person, or the breasts of any female person, or specified sexual activities that involve the exposure of the genitals or buttocks of any person, or the breasts of any female person.” Cal. Pen. Code § 318.5(a). Note that this category includes strip club-type establishments, not adult bookstores or stores selling sexually oriented paraphernalia.

We could not locate a reliable source from which we could generate a comprehensive list of adult or sexually oriented businesses and establishments in California

counties. To identify and obtain mailing information for these entities, it may be helpful to contact local agencies that regulate them, such as city planning or police departments.

3. Primary airports, as defined in Section 47102(16) of Title 49 of the United States Code.

A “primary airport” is a “commercial service airport the Secretary [of Transportation] determines to have more than 10,000 passenger boardings each year.” 49 U.S.C. § 47102(16). Primary airports in California can be identified by visiting the Federal Aviation Authority’s Passenger Boarding data page for all airports in the United States, available at http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/index.cfm?year=2012. Select the most recent “Calendar Year” from the drop down menu and click “Go.” To the right of the “Enplanements at All Commercial Service Airports (by Rank)” hyperlink, select the “MS Excel” hyperlink. A Excel spreadsheet appears that ranks airports according to “Enplanements” (passenger boardings) and identifies each airport’s city and state. Sort the list by state in Column C to cluster the California airports together. Any airport with over 10,000 enplanements in the latest year is a “primary airport.”

4. Intercity passenger rail or light rail stations.

It is difficult to locate a listing identifying operators of intercity passenger rail and light rail stations because there does not appear to be a centralized group (governmental or otherwise) that licenses or regulates these entities at the state or federal level. However, many passenger rail services are run by city or county government; therefore, a good first step might be to contact City Attorney or District Attorney offices and inquire about the local public transportation providers.

5. Bus stations.

The boundaries of this category are unclear. Section 52.6 does not provide any clarification about what constitutes a bus station—a station is likely different from a bus “stop” but it is difficult to set that dividing line. A roadside sign with a bench is likely not a bus station while a large building housing a bus terminal likely is, but what about covered benches or structures with restroom facilities? Is a bus station any place where riders can purchase tickets? The statute simply does not provide further guidance.

A good first step in identifying applicable bus stations would be to compile a list of bus operators in your area and ask which entities operate the bus stations. Note that bus stations could be operated by public or private entities (i.e., a city or Greyhound). To identify and obtain mailing information for these bus operators, it may be helpful to contact the federal Department of Transportation or the California Department of Motor Vehicles. After obtaining a list of bus operators, an appropriate local or state regulatory agency could

advise each bus operator (and/or any other entity that has authority over bus stations) that bus stations must post the Notice in order to be in compliance with Section 52.6.

6. Truck stops. For purposes of this section, “truck stop” means a privately owned and operated facility that provides food, fuel, shower or other sanitary facilities, and lawful overnight truck parking.

The California Department of Transportation (“CA DOT”) provides a listing of the addresses and phone numbers some truck stops in the state; however, this list is likely not complete. It is available at <http://www.dot.ca.gov/hq/traffops/trucks/routes/truck-stops.htm>. Additional searching for private truck stops operators or input from local or state agencies with regulatory authority over truck stops is needed to determine if there are truck stops in California in addition to those identified on the CA DOT webpage.

7. Emergency rooms within general acute care hospitals.

The California Office of Statewide Health Planning and Development maintains a listing of licensed hospitals that indicates the level of emergency services provided and the contact information for each hospital. Go to the listing of facilities available at <http://oshpd.ca.gov/HID/Products/Listings.html>. Under the “Hospitals” heading, select the latest “Hospital Listing” hyperlink (in Excel or PDF format). From this chart, local general acute care hospitals can be identified by checking the appropriate “COUNTY_NAME” column and the “LICENSE_CATEGORY_DESC” column for “General Acute Care Hospital.” Note that the resultant chart also contains an “ER_SERVICE_LEVEL_DESC” column, but rather than rely on that column for determining whether or not the hospital has an emergency room, it is more comprehensive to include all hospitals when compiling a list under this category and inform the hospitals that notices only have to be displayed in their emergency rooms.

8. Urgent care centers.

Urgent care centers do not appear to be highly regulated by a state health agency and a reliable public listing of urgent care centers in California is not available. To identify and obtain mailing information for urgent care centers, it may be helpful to determine which local or state agency regulates these businesses or establishments (if any), and contact that agency.

Insurance company websites may be another resource for identifying urgent care centers in California. Insurance providers often maintain lists or searchable databases of centers that offer services covered by providers’ insurance policies.

9. Farm labor contractors, as defined in subdivision (b) of Section 1682 of the Labor Code.

According to Cal. Labor Code § 1682(b), “[f]arm labor contractor’ designates any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to these persons.”

To identify “farm labor contractors,” go to the California Department of Industrial Relations website’s searchable farm labor contractor license database, available at <http://www.dir.ca.gov/databases/dlseir/farmlic.html>. Searches must be performed city-by-city and will generate lists of licensed farm labor contractors that includes names and addresses. Note that there may be many cities that do not turn up any results. For example, in all 88 cities in Los Angeles County, there are only two licensed farm labor contractors in the Department of Industrial Relations database. Whereas, in the City of Fresno alone, there are 70 licensed farm labor contractors.

10. Privately operated job recruitment centers.

We have been unable to locate any resource or other centralized information source for determining what privately operated job recruitment centers currently operate in California and have not been able to determine which state or local agencies regulate these entities.

11. Roadside rest areas.

The California Department of Transportation maintains a “Statewide Rest Areas” listing, available at <http://www.dot.ca.gov/hq/maint/ra/Statewide.htm>. The webpage identifies 60 California rest areas and their amenities. To determine the location the rest areas within the state, click on each rest area’s hyperlink. A new chart appears that identifies the rest area’s county and general location under the “Route and Location” column. Unfortunately, the chart does not list an address.

12. Businesses or establishments that offer massage or bodywork services for compensation and are not described in paragraph (1) of subdivision (b) of Section 4612 of the Business and Professions Code.

As specified in Section 52.6, this category includes only massage or bodywork businesses or establishments that are *not described* in Business and Professions Code § 4612(b)(1); put another way, this category includes only massage establishments that are sole proprietorships where the sole proprietor is *not certified* pursuant to the applicable chapter and businesses or establishments that employ massage workers *not certified* to provide massage services. *Compare* Bus. & Prof. Code § 4612(b)(1) (“This subdivision shall

apply only to massage establishments that are sole proprietorships, where the sole proprietor is certified pursuant to this chapter, and to massage establishments or businesses that employ or use only persons certified pursuant to this chapter to provide massage services. For purposes of this subdivision, a sole proprietorship is a business where the owner is the only person employed by that business to provide massage services.”)

The difficulty in identifying businesses and establishments in this category is that they are, by definition, businesses and establishments that employ unlicensed workers and thus those workers are “off the map.” If a group working to implement Section 52.6 is able to obtain a list of massage or bodywork businesses or establishments that are properly certified and that employ only certified massage workers, then it may be possible to cross-reference this list against those that are advertising their services on the Internet or other locations to determine which entities fall within the ambit of Section 52.6. Another next step may be to work with a local police department or City Attorney office to identify these businesses and establishments employing unlicensed workers, because those governmental bodies are likely trying to identify these entities too.

III. CONCLUSION

The research and information explained above represents only suggested starting points for identification efforts with respect to businesses and establishments required to post Notices under Section 52.6. It is our understanding that groups working to implement Section 52.6 are independently ascertaining and verifying which businesses and establishments must post the Notice in their respective areas, and will use the analysis of categories and identification of specified businesses and establishments presented in this memorandum—which is not comprehensive since all necessary information was not publicly available—as an exemplar of methodologies that the groups can replicate as one part of larger efforts to identify entities that are subject to the statute in their respective areas.