

SENATE BILL REPORT

HB 2384

As Reported by Senate Committee On:
Law & Justice, February 26, 2016

Title: An act relating to clarifying the meaning of mobile telecommunications service provider.

Brief Description: Clarifying the meaning of mobile telecommunications service provider.

Sponsors: Representatives Buys, Wylie, Orwall and Rodne.

Brief History: Passed House: 2/15/16, 97-0.

Committee Activity: Law & Justice: 2/23/16, 2/26/16 [DP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Frockt, Pearson and Roach.

Staff: Tim Ford (786-7423)

Background: Disclosure of Intimate Images. In the second special session of 2015 the Legislature established the crime of disclosing intimate images. A person commits this crime when:

1. the person knowingly discloses an intimate image of another person;
2. the image was obtained under circumstances in which a reasonable person would know or understand that the image was to remain private; and
3. the person disclosing the image knows or should have known that the depicted person had not consented to the disclosure.

No liability is imposed upon certain entities when the intimate image disclosed is content provided by a third party. These exempted entities are:

1. an interactive computer service, as defined in Section 230 of the Communications Decency Act;
2. a provider of public or private mobile service, as defined in "Section 13-214 of the Public Utilities Act;" and
3. a telecommunications network or broadband provider.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The criminal prohibition does not apply to images involving voluntary exposure in public or commercial settings, or disclosures made in the public interest, such as the reporting of unlawful conduct.

Section 230 of the Communications Decency Act. In 1996, Congress enacted the Communications Decency Act (Act), broadly aimed at addressing online abuse of children. Section 230 of the Act provides certain entities with broad immunity from liability for content posted by third parties. Specifically, the provider of an "interactive computer service" will not be treated as the publisher or speaker of any information provided by a user of the computer service. "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including, specifically, a service or system that provides access to the Internet, and such systems operated or services offered by libraries or educational institutions. This definition includes, for example, websites and persons hosting messaging boards or blogs.

The effect of Section 230 is that the provider of an interactive computer service cannot be held liable for certain damages caused by users of its service. This Section 230 immunity has preemptive effect, and a state law that conflicts with it can be struck down by the court. Congress carved out some limitations to Section 230 immunity. These limitations provide, for example, that nothing in Section 230 shall be construed to limit the application of federal criminal law, or of communications privacy law, including the federal wiretapping law and any similar state laws.

Senate Bill 6251. In 2012, the Legislature enacted Senate Bill 6251, establishing a criminal offense of advertising commercial sexual abuse of a minor. The website Backpage.com and other plaintiffs sought a preliminary injunction in federal court to prevent enforcement of the law against the website. Backpage.com argued a number of grounds for the injunction, including that enforcement would violate Section 230. The court found that if the case proceeded, plaintiffs would be likely to succeed on the merit of their Section 230 claim. The case suggests that a state criminal law will be found to violate Section 230 if it treats an online service provider, like Backpage.com, as the publisher or speaker of any information provided by a third party. After the court granted Backpage.com a preliminary injunction, the state settled the case and agreed to pay Backpage.com \$200,000 in attorneys' fees and to work with the Legislature to repeal SB 6251. SB 6251 was repealed by the Legislature in 2013.

Summary of Bill: An incorrect reference borrowed from an unknown law is changed. A mobile telecommunications service provider, as referenced in state business and occupations tax code, is not subject to liability under the criminal statute prohibiting disclosure of intimate images, when the provider's disclosure is solely as a result of content provided by another person.

"Mobile telecommunications service provider" means a facilities-based carrier or reseller with whom the customer contracts for mobile telecommunications services. A facilities based carrier is one that owns most of its facilities, such as switching equipment and transmission lines. A reseller does not own most of its facilities but rather may resell service

from one or more of the major carriers. According to the Department of Revenue, there are approximately 250 mobile telecommunications service providers doing business in Washington.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is necessary to correct an inaccurate reference from model legislation.

Persons Testifying: PRO: Rep. Buys, Prime Sponsor.

Persons Signed In To Testify But Not Testifying: No one.