

# SENATE BILL REPORT

## SB 6492

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As of January 24, 2018

**Title:** An act relating to child sex trafficking.

**Brief Description:** Concerning child sex trafficking.

**Sponsors:** Senators O'Ban, Kuderer, Conway, Darneille, Saldaña, Padden, Hasegawa, Ranker, Keiser, Schoesler, Becker, Wilson, Warnick, Brown, Zeiger, Miloscia, Sheldon, Chase, Frockt and Wagoner.

**Brief History:**

**Committee Activity:** Law & Justice: 1/23/18.

**Brief Summary of Bill**

- Establishes liability for website operators who actively engage in developing or creating content to market minors for commercial sex services.
- Defines terms including website operator, and actively engaged in developing advertising content for purposes of the chapter.
- Excludes website operators from liability if they only host content, but are not actively engaged in developing content.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** Washington Laws Combatting Sex Trafficking of Children. Washington's legislative policy to combat human trafficking spans many years. Washington's basic legal framework punishes traffickers and supports trafficking survivors by providing victim assistance and protection services.

The following are examples of Washington's laws combatting trafficking:

- added two Class A felony crimes criminalizing trafficking and added the crime of trafficking to the definition of criminal profiteering (2003);
- enacted new crimes relating to commercial sexual abuse of a minor (2008);

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- strengthened the penalties for sex crimes involving minors (2010);
- authorized seizure and forfeiture of property in crimes of commercial sexual abuse and promoting commercial sexual abuse of a minor (2012);
- increased the fine paid upon conviction for patronizing a prostitute and directed the fines to pay for increased trafficking enforcement and prevention programs (2012);
- prohibited duplication or distribution of child pornography (2012);
- established the commercially sexually exploited children's statewide coordinating committee (2013; re-authorized and expanded in 2015 and 2017);
- established the internet crimes against children account exclusively addressing internet-facilitated crimes and promoting education on internet safety (2015); and
- authorized the Office of Crime Victims Assistance within Washington's Department of Commerce to create a new web portal and information clearinghouse for public access to anti-trafficking information and resources (2015).

Communications Decency Act of 1996. Congress enacted the Communications Decency Act of 1996 (CDA) to regulate transmission of obscene and indecent materials via the internet. Soon after it passed, the courts found portions of the law overly broad and unconstitutional in violation of the First Amendment right to free speech. Section 230 of the CDA gives immunity for internet service providers (ISPs) and users from lawsuits against them based on third-party content.

In 2012, the Legislature passed SB 6251 regulating advertising of commercial sexual abuse of a minor. The Internet site Backpage.com, challenged the Washington law under the immunity provisions of the CDA. The U.S. District Court granted Backpage's preliminary injunction request. Ultimately the case settled without further court action.

In 2014, Washington's Senate Joint Memorial 8003 asked Congress to amend the 1996 federal CDA to recognize changes in the scope and increased use of the internet to facilitate child sex trafficking. Congress did not amend the CDA. The CDA's immunity provisions for ISPs and users remain in effect.

J.S. et al. v Village Voice Media Holdings dba Backpage.com. In 2012, three minors in Washington filed a civil suit against Backpage.com. Online advertisements posted on Backpage.com featured the minors and offered them for sexual services. Backpage.com filed a motion to dismiss the suit based on the immunity provisions in Section 230 of the CDA. The trial judge denied the motion to dismiss. On appeal, Washington's Supreme Court upheld the trial court ruling. The minors alleged that Backpage.com helped its advertisers to develop content in their ads to avoid triggering law enforcement scrutiny while still conveying the unlawful offer of the minors for sexual services. The Supreme Court ruled that an ISP could be both a content provider and a service provider. Under the plain language of the Section 230 immunity, an ISP that created or developed content would not be immune from lawsuits under the CDA. In this case, the parties settled before the trial court reached a final decision.

**Summary of Bill:** Any website operator that has a significant business purpose for marketing individuals for commercial sex purposes is responsible for the content of any advertisements featuring minors on its website. A website operator is not immune from any suit alleging the website operator actively engaged in developing advertising content used for

human sex trafficking and including child sex trafficking. A website operator that only hosts content is not responsible or liable.

Discovery is permitted in any claim of website operator liability to determine the website operator's role in creating or developing website content. In this chapter, a website operator means a person or entity that can act as a website administrator, can change or reconfigure a website, set permissions, enable logging, or perform other administrative functions on the website.

A website operator is actively engaged in developing advertising content if the operator has responsibility for creating or developing content, in whole or in part, including but not limited to performing any of the following:

- advertising any form of commercial sex is a significant business purpose or the operator;
- editing or history of editing content by the website of any form of commercial sex;
- using website operator-created rules or policies that allow traffickers, website operators, or others to evade or hinder law enforcement;
- using a policy or rule to delete evidence of any form of commercial sex from the website or its archives; or
- making any effort to direct website users to obtain content of any form of commercial sex from a different website or other source.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on January 1, 2019.

**Staff Summary of Public Testimony:** PRO: Human trafficking is a modern form of slavery. Washington made a prior effort with legislation to combat internet advertisement of children for commercial sexual exploitation. This bill takes a different approach consistent with the state Supreme Court's decision by creating a statutory cause of action and remedy. The bill strengthens the ability for survivors to sue Backpage.com for its wrongful acts. It expands and clarifies what a content developer means. Technology will change and civil law case theories evolve with the evolving business of sex trafficking. The civil case was brought by three trafficking survivors; seventh and ninth grade minors who came under the influence of professional pimps. Their pimps posted photos offering them for sexual services on Backpage. Minutes after the ads were up, the phones rang to arrange sexual encounters. There has been a huge jump in child sex trafficking reports because of the internet ads and smart phones, according to the national center for missing and exploited. Children are vulnerable to commercial sexual exploitations because children are easier to control than adults. Pedophiles are drawn to internet ads by signals that the persons advertised are children. Child sex trafficking is a crime. Courts should make perpetrators accountable and survivors who want to face them in court should have that chance. As a child sex trafficking survivor said, "we need someone to give us a fighting chance." The mother of a 14-year old run away called home for help. The mother found the internet ad offering her daughter for

sex services and made up her own sting; two men were arrested. The child is very traumatized from the experience. Every day is a struggle for her and for the whole family. She was repeatedly raped, burned, beaten; knife wounds were inflicted. We need laws to hold all who profit from child abuse accountable. We have learned how these companies operate by targeting specific activities. We need the state to take on-going action to stay on top of the constant evolution of these businesses. As a survivor with personal experience, my trafficker posted an advertisement online. Some companies do nothing to verify the posted ads. I had many experiences working with minors when I was in the life. Most of them were promoted online. Backpage does not verify ads and has changed its payment processes to accept gift cards in exchange for posting, allowing the poster and victim identity to be hidden. We need a stricter verification process for ads.

**Persons Testifying:** PRO: Senator Steve O'Ban, Prime Sponsor; Jennifer Moura, citizen; Erik Bauer, citizen; Elle Snow, citizen; Shelly Hunt, citizen; Jennifer Tucker, citizen.

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