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SENATE BILL 6492

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State of Washington

65th Legislature

2018 Regular Session

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

Read first time 01/19/18. Referred to Committee on Law & Justice.

1 AN ACT Relating to child sex trafficking; adding a new chapter to  
2 Title 4 RCW; creating a new section; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that child sex  
5 trafficking frequently occurs over the internet. Minors are commonly  
6 bought and sold on web sites that display classified advertisements  
7 including unabashedly commercial sex web sites that purport to sell  
8 "escorts." Many of these web sites feature commercial sex  
9 advertisements of adults. However, many minors are also advertised on  
10 these web sites.

11 (2) The legislature also finds that due to the internet, reports  
12 of child sex trafficking have increased at an alarming rate. Child  
13 sex trafficking through internet advertisements is a serious threat  
14 to the safety and health of children in Washington state. Mahatma  
15 Gandhi once stated that "[a] nation's greatness is measured by how it  
16 treats its weakest members." The legislature intends to provide the  
17 greatest degree of protection allowable under the law to one of the  
18 most vulnerable populations in the state by doing everything possible  
19 to eliminate online child sex trafficking advertisements or any type  
20 of online child commercial sex advertisements in Washington state.

1           (3) The legislature finds that many web site operators are  
2 diligent in actively controlling content to avoid facilitating sex  
3 trafficking of minors as well as assisting law enforcement in  
4 investigations. These operators do not assist in developing web site  
5 or advertising content to circumvent laws protecting minors and  
6 derive little revenue, if any, from such commercial activity.  
7 However, it is the intent of the legislature that any web site  
8 operator that has a significant business purpose of marketing  
9 individuals for commercial sex purposes shall be considered  
10 responsible for the content of any advertisements featuring minors on  
11 its web site.

12           (4) It is the intent of the legislature to afford the children of  
13 this state the maximum protection allowed by the state and federal  
14 law from the tremendous harm caused by online child sex trafficking.  
15 Victims who have been harmed due to online child sex trafficking must  
16 be afforded the fullest extent of all civil laws designed to  
17 compensate for such injuries. Individuals, corporations, and  
18 businesses that are web site operators that illegally participate in  
19 online child sex trafficking must be prosecuted to the full extent of  
20 Washington state criminal statutes.

21           (5) The legislature intends and respectfully requests that the  
22 courts of the state interpret 47 U.S.C. Sec. 230 in a fashion most  
23 conducive to the protection of children from the harms inherent in  
24 any form of online commercial child sex advertising. The legislature  
25 intends that 47 U.S.C. Sec. 230 should be interpreted in a manner  
26 allowing for the widest enforcement of all state and federal  
27 statutory and common laws, both civil and criminal, which could be  
28 used to penalize web site operators that are involved in the  
29 commercialized sex advertising of minors, or provide a civil remedy  
30 for victims of commercial sex advertising of children. It is the  
31 intent of the legislature to codify the holding in *J.S., S.L. and*  
32 *L.C. v. Village Voice Media Holdings d/b/a Backpage.com L.L.C.*, and  
33 for that case to be applied for the protection of children to the  
34 maximum extent allowable by state and federal law.

35           (6) The legislature intends that any individual, corporation,  
36 partnership, or other entity that is a web site operator involved in  
37 online commercial sex advertising of children shall be subject to the  
38 full range of penalties and remedies afforded under Washington state  
39 criminal and civil law, both statutory law, and common law, whenever  
40 such entity is responsible in whole or in part for the creation or

1 development of content which assists in the advertising or marketing  
2 of minors for sex.

3 NEW SECTION. **Sec. 2.** The definitions in this section apply  
4 throughout this chapter unless the context clearly requires  
5 otherwise.

6 (1) "Actively engaged in developing advertising content" means a  
7 web site operator that has responsibility for the creation or  
8 development of content in whole or in part which shall include, but  
9 not be limited to the following:

10 (a) A significant business purpose of advertising human sex  
11 trafficking, child sex trafficking, prostitution, or any other form  
12 of commercial sex;

13 (b) Any editing or history of editing by the web site of content  
14 containing human sex trafficking, child sex trafficking,  
15 prostitution, or any other form of commercial sex advertisements;

16 (c) Any web site operator-created rules or policies that have the  
17 effect of allowing traffickers, the web site operators, or others to  
18 evade or hinder law enforcement including, but not limited to, rules  
19 prohibiting the use of terms, phrases, or images in certain  
20 advertisements commonly used in sex trafficking for the purpose of  
21 making law enforcement detection difficult;

22 (d) Any policy or rule to delete information containing evidence  
23 of human sex trafficking, child sex trafficking, prostitution, or any  
24 other form of commercial sex from the web site or its archives; or

25 (e) Any effort by the web site operator to direct users of the  
26 web site to obtain information or content of a human sex trafficking,  
27 child sex trafficking, prostitution, or any other form of commercial  
28 sex advertisement from a different source, such as a different web  
29 site or other information source.

30 (2) "Commercial sex" means any act of sexual contact or sexual  
31 intercourse with a person under the age of eighteen in which  
32 something of value is given or received in violation of RCW  
33 9A.40.100.

34 (3) "Human sex trafficking and child sex trafficking" means the  
35 recruitment, harboring, transportation, provision, obtaining,  
36 patronizing, or soliciting of a person for the purposes of a  
37 commercial sex act, in which the commercial sex act is induced by  
38 force, fraud, or coercion, or in which the person induced to perform

1 such an act has not attained eighteen years of age in violation of 22  
2 U.S.C. Sec. 7102.

3 (4) "Prostitution" means a person engages or agrees or offers to  
4 engage in sexual conduct with another person under the age of  
5 eighteen in return for a fee in violation of RCW 9A.88.030.

6 (5) "Web site operator" means a person or company that can act as  
7 a web site administrator and can change or reconfigure a web site,  
8 set web site access permissions, enable logging, change the default  
9 document header or footer, set content expiration, and enable content  
10 ratings features.

11 NEW SECTION. **Sec. 3.** Any web site operator that has a  
12 significant business purpose for marketing individuals for commercial  
13 sex purposes is responsible for the content of any advertisements  
14 featuring minors on its web site. A web site operator is not immune  
15 from suit in law or equity in which it is alleged that the web site  
16 operator actively engaged in developing advertising content that was  
17 used for human sex trafficking and child sex trafficking,  
18 prostitution, or commercial sex. This section does not apply to a web  
19 site operator who simply hosted content. A web site does not need to  
20 actually provide or author content to be responsible in part for that  
21 content. Courts considering claims made under this section must  
22 permit discovery to determine whether a web site is responsible even  
23 in part, for the creation or development of any content on its web  
24 site.

25 NEW SECTION. **Sec. 4.** Sections 2 and 3 of this act constitute a  
26 new chapter in Title 4 RCW.

27 NEW SECTION. **Sec. 5.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 6.** This act takes effect January 1, 2019.

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