
Technology & Economic Development Committee

SJM 8003

Brief Description: Requesting Congress to amend the Communications Decency Act.

Sponsors: Senators Kohl-Welles, Padden, Kline, Roach, Fraser, Carrell, Darneille, Pearson, Conway and Chase.

Brief Summary of Bill

- Petitions Congress and the President to amend the Communications Decency Act of 1996 to authorize states to enact and enforce laws holding internet service providers liable when they knowingly facilitate child sex trafficking through the sale of adult escort advertisements.

Hearing Date: 2/20/14

Staff: Jasmine Vasavada (786-7301).

Background:

Section 230 of the Communications Decency Act was enacted in 1996 to promote, among other stated policies, the continued development of the internet and other interactive computer services and media. Also known as the "Safe Harbor" provision, Section 230 provides internet service providers (ISPs) and intermediaries with immunity from liability for online content created or posted by third parties. Prior to passage of Section 230, some courts had found that a website could be sued or prosecuted for harmful content posted by the website's visitors. Such rulings were consistent with common law doctrines that hold publishers or speakers liable for defamatory or otherwise harmful speech. In enacting Section 230, Congress provided that ISPs and intermediaries shall not be treated as a "publisher" or "speaker" of any information provided by a third party, providing immunity from liability even if they have actual notice of the harmful or offensive content posted and fail to take action.

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.

In granting immunity from liability, Congress also prohibited states from passing laws that are "inconsistent" with Section 230. State laws that would criminalize the publication of certain offensive third-party advertisements fall squarely within the scope of Section 230 immunity. In 2012 Washington enacted Senate Bill 6251, creating the felony offense of "advertising commercial sexual abuse of a minor." Before the law went into effect, an operator of an online classified advertising service, Backpage.com, filed an action in federal court to enjoin its enforcement. The federal district court referenced statements in the docket that many child prostitutes are advertised through online escort advertisements displayed on Backpage.com and similar websites. However, the court granted a preliminary injunction to stop enforcement of SB 6251. Among other grounds for enjoining enforcement of SB 6251, the court found that it is likely inconsistent with and therefore expressly preempted by Section 230. In the final settlement of the case, the Washington State Attorney General agreed not to appeal the decision or take further action to enforce the statute.

Summary of Bill:

The Legislature enacts a joint memorial urging Congress to amend the Communications Decency Act of 1996 to reflect the current scope and power of the internet, to acknowledge the publisher-like role of companies like Backpage.com, and to authorize states to enact and enforce laws holding ISPs liable when they knowingly facilitate child sex trafficking through the sale of adult escort advertisements.

In support of this joint memorial, the Legislature makes certain findings, including but not limited to the following:

- that the internet has changed dramatically over the past 17 years;
- that companies such as Backpage.com earn millions of dollars annually from the sale of location-specific internet advertisements, some of which directly facilitate the sex trafficking of minors and other victims; and
- that unless Congress changes Section 230, states will remain powerless to enact meaningful reforms to hold accountable those ISPs who profit by turning a blind eye to the role in facilitating crimes against children.

Appropriation: None.

Fiscal Note: Not requested.