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**SENATE BILL 5897**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Padden and Nguyen

AN ACT Relating to child sex trafficking and sexual exploitation; adding a new section to chapter 19.320 RCW; adding a new section to chapter 9.68A RCW; creating new sections; prescribing penalties; and providing an effective date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that child sex trafficking and commercial sexual exploitation frequently occurs through advertisements over the internet and on web sites. Many web sites feature commercial sex advertisements of adults. However, many also include minors in advertisements for commercial sexual exploitation, sexual conduct, or sex trafficking.

(2) The legislature also finds that due to the internet, reports of child sex trafficking have increased at an alarming rate. Child sex trafficking through internet advertisements is a serious threat to the safety and health of children in Washington state.

(3) The legislature finds that many interactive computer services are diligent in actively controlling content to avoid facilitating sex trafficking of minors as well as assisting law enforcement in investigations. These interactive computer services do not assist in developing web site or advertising content to circumvent laws protecting minors and derive little revenue, if any, from such commercial activity. However, it is the intent of the legislature that any owner, manager, or operator of an interactive computer service that markets individuals for commercial sex purposes is responsible for the content of any advertisements featuring minors on its web site.

(4) In April 2018, a new federal law amended 47 U.S.C. Sec. 230, which had previously immunized online services from liability for the sex trafficking activities of the online services' users. The new law, P.L. 115-164, is called the FOSTA-SESTA act (allow states and victims to fight online sex trafficking - stop enabling sex traffickers). In its findings congress said "47 U.S.C. Sec. 230 was never intended to provide legal protection to web sites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims."

(5) The FOSTA-SESTA act provides that nothing in the federal law shall be construed to limit or preempt any civil action or criminal prosecution under state statutes if the conduct underlying the criminal charge would be a crime under 18 U.S.C. Sec. 1591 or 2421A or the underlying conduct would constitute a civil claim under 47 U.S.C. Sec. 430.

(6) It is the intent of the legislature to afford the children of this state the maximum protection allowed by state and federal law from the tremendous harm caused by online child sex trafficking and commercial sexual exploitation. Persons who have been harmed by online child sex trafficking or commercial sexual exploitation must be afforded the fullest extent of all civil laws designed to compensate for their injuries and the costs of pursuing civil claims through the courts. Individuals, corporations, and businesses that use or provide interactive computer services and illegally participate in online child sex trafficking or commercial sexual exploitation must be prosecuted fully under Washington state criminal statutes.

(7) The legislature intends that any individual, corporation, partnership, or other entity that owns, manages, or operates an interactive computer service involved in online commercial sex advertising of minors be subject to the full range of penalties and remedies afforded under Washington state criminal and civil law.

NEW SECTION. **Sec.**  A new section is added to chapter 19.320 RCW to read as follows:

(1) A private right of action or claim is created for any person who, while a minor, is victimized through human sex trafficking and child sex trafficking or commercial sex, including, but not limited to, being depicted in advertising or marketing of commercial sex or prostitution on a web site.

(2) The individual, corporation, partnership, or other entity that owns, manages, or operates an interactive computer service is responsible for the content of any advertisements featuring minors on its web site and is liable in a civil action under subsection (1) of this section for damages together with costs of suit and a reasonable sum for attorneys' fees.

(3) For purposes of this section:

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

(b) "Human sex trafficking and child sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained eighteen years of age in violation of 22 U.S.C. Sec. 7102.

(c) "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.

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

NEW SECTION. **Sec.**  A new section is added to chapter 9.68A RCW to read as follows:

(1) A person commits the offense of advertising commercial sexual exploitation of a minor if he or she knowingly publishes, disseminates, or displays, or causes directly or indirectly, to be published, disseminated, or displayed, any advertisement, explicit offer, or implicit offer in electronic or print media that takes place in Washington state and includes a visual or printed matter depicting sexually explicit conduct featuring a minor.

(2) In a prosecution under this section it is not a defense that the defendant did not know the age of the minor depicted in the visual or printed matter in subsection (1) of this section. It is a defense, which the defendant must prove by a preponderance of the evidence, that the defendant made a reasonable bona fide attempt to ascertain the true age of the minor depicted in the advertisement by requiring, prior to publication, dissemination, or display of the advertisement, production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper of the minor depicted in the advertisement and did not rely solely on oral or written representations of the minor's age, or the apparent age of the minor as depicted. In order to invoke the defense, the defendant must produce for inspection by law enforcement a record of the identification used to verify the age of the person depicted in the advertisement.

(3) Advertising commercial sexual abuse of a minor is a class C felony punishable under chapter 9A.20 RCW.

(4) Consent of a minor to the advertisement for a commercial sexual act does not constitute a defense to any offense listed in this section.

NEW SECTION. **Sec.**  If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

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

NEW SECTION. **Sec.**  This act takes effect January 1, 2020.

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