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**SENATE BILL 5897**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Padden and Nguyen

Read first time 02/11/19. Referred to Committee on Law & Justice.

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

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

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

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

16 (3) The legislature finds that many interactive computer services  
17 are diligent in actively controlling content to avoid facilitating  
18 sex trafficking of minors as well as assisting law enforcement in  
19 investigations. These interactive computer services do not assist in  
20 developing web site or advertising content to circumvent laws  
21 protecting minors and derive little revenue, if any, from such

1 commercial activity. However, it is the intent of the legislature  
2 that any owner, manager, or operator of an interactive computer  
3 service that markets individuals for commercial sex purposes is  
4 responsible for the content of any advertisements featuring minors on  
5 its web site.

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

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

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

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

38 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.320  
39 RCW to read as follows:

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

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

12 (3) For purposes of this section:

13 (a) "Commercial sex" means any act of sexual contact or sexual  
14 intercourse with a person under the age of eighteen in which  
15 something of value is given or received in violation of RCW  
16 9A.40.100.

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

24 (c) "Interactive computer service" means any information service,  
25 system, or access software provider that provides or enables computer  
26 access by multiple users to a computer server, including specifically  
27 a service or system that provides access to the internet and such  
28 systems operated or services offered by libraries or educational  
29 institutions.

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

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.68A  
34 RCW to read as follows:

35 (1) A person commits the offense of advertising commercial sexual  
36 exploitation of a minor if he or she knowingly publishes,  
37 disseminates, or displays, or causes directly or indirectly, to be  
38 published, disseminated, or displayed, any advertisement, explicit  
39 offer, or implicit offer in electronic or print media that takes

1 place in Washington state and includes a visual or printed matter  
2 depicting sexually explicit conduct featuring a minor.

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

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

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

24 NEW SECTION. **Sec. 4.** If any part of this act is found to be in  
25 conflict with federal requirements that are a prescribed condition to  
26 the allocation of federal funds to the state, the conflicting part of  
27 this act is inoperative solely to the extent of the conflict and with  
28 respect to the agencies directly affected, and this finding does not  
29 affect the operation of the remainder of this act in its application  
30 to the agencies concerned. Rules adopted under this act must meet  
31 federal requirements that are a necessary condition to the receipt of  
32 federal funds by the state.

33 NEW SECTION. **Sec. 5.** If any provision of this act or its  
34 application to any person or circumstance is held invalid, the  
35 remainder of the act or the application of the provision to other  
36 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 6.**    This act takes effect January 1, 2020.

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