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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

AN ACT Relating to child sex trafficking; adding a new chapter to Title 4 RCW; creating a new section; 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 frequently occurs over the internet. Minors are commonly bought and sold on web sites that display classified advertisements including unabashedly commercial sex web sites that purport to sell "escorts." Many of these web sites feature commercial sex advertisements of adults. However, many minors are also advertised on these web sites.

(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. Mahatma Gandhi once stated that "[a] nation's greatness is measured by how it treats its weakest members." The legislature intends to provide the greatest degree of protection allowable under the law to one of the most vulnerable populations in the state by doing everything possible to eliminate online child sex trafficking advertisements or any type of online child commercial sex advertisements in Washington state.

(3) The legislature finds that many web site operators are diligent in actively controlling content to avoid facilitating sex trafficking of minors as well as assisting law enforcement in investigations. These operators 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 web site operator that has a significant business purpose of marketing individuals for commercial sex purposes shall be considered responsible for the content of any advertisements featuring minors on its web site.

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

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

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

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

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

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

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

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

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

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

(2) "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.

(3) "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.

(4) "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.

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

NEW SECTION. **Sec.**  Any web site 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 web site. A web site operator is not immune from suit in law or equity in which it is alleged that the web site operator actively engaged in developing advertising content that was used for human sex trafficking and child sex trafficking, prostitution, or commercial sex. This section does not apply to a web site operator who simply hosted content. A web site does not need to actually provide or author content to be responsible in part for that content. Courts considering claims made under this section must permit discovery to determine whether a web site is responsible even in part, for the creation or development of any content on its web site.

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

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, 2019.

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