

Calendar No. 339

115TH CONGRESS
2D SESSION

H. R. 1865

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2018

Received; read the first time

MARCH 1, 2018

Read the second time and placed on the calendar

AN ACT

To amend the Communications Act of 1934 to clarify that section 230 of such Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Allow States and Vic-
3 tims to Fight Online Sex Trafficking Act of 2017”.

4 **SEC. 2. SENSE OF CONGRESS.**

5 It is the sense of Congress that—

6 (1) section 230 of the Communications Act of
7 1934 (47 U.S.C. 230; commonly known as the
8 “Communications Decency Act of 1996”) was never
9 intended to provide legal protection to websites that
10 unlawfully promote and facilitate prostitution and
11 websites that facilitate traffickers in advertising the
12 sale of unlawful sex acts with sex trafficking victims;

13 (2) websites that promote and facilitate pros-
14 titution have been reckless in allowing the sale of sex
15 trafficking victims and have done nothing to prevent
16 the trafficking of children and victims of force,
17 fraud, and coercion; and

18 (3) clarification of such section is warranted to
19 ensure that such section does not provide such pro-
20 tection to such websites.

21 **SEC. 3. PROMOTION OF PROSTITUTION AND RECKLESS DIS-**
22 **REGARD OF SEX TRAFFICKING.**

23 (a) PROMOTION OF PROSTITUTION.—Chapter 117 of
24 title 18, United States Code, is amended by inserting after
25 section 2421 the following:

1 **“§ 2421A. Promotion or facilitation of prostitution**
2 **and reckless disregard of sex trafficking**

3 “(a) IN GENERAL.—Whoever, using a facility or
4 means of interstate or foreign commerce or in or affecting
5 interstate or foreign commerce, owns, manages, or oper-
6 ates an interactive computer service (as such term is de-
7 fined in defined in section 230(f) the Communications Act
8 of 1934 (47 U.S.C. 230(f))), or conspires or attempts to
9 do so, with the intent to promote or facilitate the prostitu-
10 tion of another person shall be fined under this title, im-
11 prisoned for not more than 10 years, or both.

12 “(b) AGGRAVATED VIOLATION.—Whoever, using a
13 facility or means of interstate or foreign commerce or in
14 or affecting interstate or foreign commerce, owns, man-
15 ages, or operates an interactive computer service (as such
16 term is defined in defined in section 230(f) the Commu-
17 nications Act of 1934 (47 U.S.C. 230(f))), or conspires
18 or attempts to do so, with the intent to promote or facili-
19 tate the prostitution of another person and—

20 “(1) promotes or facilitates the prostitution of
21 5 or more persons; or

22 “(2) acts in reckless disregard of the fact that
23 such conduct contributed to sex trafficking, in viola-
24 tion of 1591(a),

25 shall be fined under this title, imprisoned for not more
26 than 25 years, or both.

1 “(c) CIVIL RECOVERY.—Any person injured by rea-
2 son of a violation of section 2421A(b) may recover dam-
3 ages and reasonable attorneys’ fees in an action before any
4 appropriate United States district court.

5 “(d) MANDATORY RESTITUTION.—Notwithstanding
6 sections 3663 or 3663A and in addition to any other civil
7 or criminal penalties authorized by law, the court shall
8 order restitution for any violation of subsection (b)(2).
9 The scope and nature of such restitution shall be con-
10 sistent with section 2327(b).

11 “(e) AFFIRMATIVE DEFENSE.—It shall be an affirm-
12 ative defense to a charge of violating subsection (a), or
13 subsection (b)(1) where the defendant proves, by a prepon-
14 derance of the evidence, that the promotion or facilitation
15 of prostitution is legal in the jurisdiction where the pro-
16 motion or facilitation was targeted.”.

17 (b) TABLE OF CONTENTS.—The table of contents for
18 such chapter is amended by inserting after the item relat-
19 ing to section 2421 the following:

“2421A. Promotion or facilitation of prostitution and reckless disregard of sex
trafficking.”.

1 **SEC. 4. ENSURING ABILITY TO ENFORCE FEDERAL AND**
2 **STATE CRIMINAL AND CIVIL LAW RELATING**
3 **TO SEX TRAFFICKING.**

4 (a) IN GENERAL.—Section 230(e) of the Commu-
5 nications Act of 1934 (47 U.S.C. 230(e)) is amended by
6 adding at the end the following:

7 “(5) NO EFFECT ON SEX TRAFFICKING LAW.—
8 Nothing in this section (other than subsection
9 (c)(2)(A)) shall be construed to impair or limit—

10 “(A) any claim in a civil action brought
11 under section 1595 of title 18, United States
12 Code, if the conduct underlying the claim con-
13 stitutes a violation of section 1591 of that title;

14 “(B) any charge in a criminal prosecution
15 brought under State law if the conduct under-
16 lying the charge would constitute a violation of
17 section 1591 of title 18, United States Code; or

18 “(C) any charge in a criminal prosecution
19 brought under State law if the conduct under-
20 lying the charge would constitute a violation of
21 section 2421A of title 18, United States Code,
22 and promotion or facilitation of prostitution is
23 illegal in the jurisdiction where the defendant’s
24 promotion or facilitation of prostitution was
25 targeted.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of the enactment
3 of this Act, and the amendment made by subsection (a)
4 shall apply regardless of whether the conduct alleged oc-
5 curred, or is alleged to have occurred, before, on, or after
6 such date of enactment.

7 **SEC. 5. ENSURING FEDERAL LIABILITY FOR PUBLISHING**
8 **INFORMATION DESIGNED TO FACILITATE**
9 **SEX TRAFFICKING OR OTHERWISE FACILI-**
10 **TATING SEX TRAFFICKING.**

11 Section 1591(e) of title 18, United States Code, is
12 amended—

13 (1) by redesignating paragraphs (4) and (5) as
14 paragraphs (5) and (6), respectively; and

15 (2) by inserting after paragraph (3) the fol-
16 lowing:

17 “(4) The term ‘participation in a venture’
18 means knowingly assisting, supporting, or facili-
19 tating a violation of subsection (a)(1).”.

20 **SEC. 6. ACTIONS BY STATE ATTORNEYS GENERAL.**

21 (a) IN GENERAL.—Section 1595 of title 18, United
22 States Code, is amended by adding at the end the fol-
23 lowing:

24 “(d) In any case in which the attorney general of a
25 State has reason to believe that an interest of the residents

1 of that State has been or is threatened or adversely af-
2 fected by any person who violates section 1591, the attor-
3 ney general of the State, as *parens patriae*, may bring a
4 civil action against such person on behalf of the residents
5 of the State in an appropriate district court of the United
6 States to obtain appropriate relief.”.

7 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
8 Section 1595 of title 18, United States Code, is amend-
9 ed—

10 (1) in subsection (b)(1), by striking “this sec-
11 tion” and inserting “subsection (a)”; and

12 (2) in subsection (c), in the matter preceding
13 paragraph (1), by striking “this section” and insert-
14 ing “subsection (a)”.

15 **SEC. 7. SAVINGS CLAUSE.**

16 Nothing in this Act or the amendments made by this
17 Act shall be construed to limit or preempt any civil action
18 or criminal prosecution under Federal law or State law
19 (including State statutory law and State common law)
20 filed before or after the day before the date of enactment
21 of this Act that was not limited or preempted by section
22 230 of the Communications Act of 1934 (47 U.S.C. 230),
23 as such section was in effect on the day before the date
24 of enactment of this Act.

1 **SEC. 8. GAO STUDY.**

2 On the date that is 3 years after the date of the en-
3 actment of this Act, the Comptroller General of the United
4 States shall conduct a study and submit to the Commit-
5 tees on the Judiciary of the House of Representatives and
6 of the Senate, the Committee on Homeland Security of
7 the House of Representatives, and the Committee on
8 Homeland Security and Governmental Affairs of the Sen-
9 ate, a report which includes the following:

10 (1) Information on each civil action brought
11 pursuant to section 2421A(c) of title 18, United
12 States Code, that resulted in an award of damages,
13 including the amount claimed, the nature or descrip-
14 tion of the losses claimed to support the amount
15 claimed, the losses proven, and the nature or de-
16 scription of the losses proven to support the amount
17 awarded.

18 (2) Information on each civil action brought
19 pursuant to section 2421A(c) of title 18, United
20 States Code, that did not result in an award of dam-
21 ages, including—

22 (A) the amount claimed and the nature or
23 description of the losses claimed to support the
24 amount claimed; and

1 (B) whether the case was dismissed, and if
2 the case was dismissed, information describing
3 the reason for the dismissal.

4 (3) Information on each order of restitution en-
5 tered pursuant to section 2421A(d) of title 18,
6 United States Code, including—

7 (A) whether the defendant was a corpora-
8 tion or an individual;

9 (B) the amount requested by the Govern-
10 ment and the justification for, and calculation
11 of, the amount requested, if restitution was re-
12 quested; and

13 (C) the amount ordered by the court and
14 the justification for, and calculation of, the
15 amount ordered.

16 (4) For each defendant convicted of violating
17 section 2421A(b) of title 18, United States Code,
18 that was not ordered to pay restitution—

19 (A) whether the defendant was a corpora-
20 tion or an individual;

21 (B) the amount requested by the Govern-
22 ment, if restitution was requested; and

1 (C) information describing the reason that
2 the court did not order restitution.

Passed the House of Representatives February 27,
2018.

Attest:

KAREN L. HAAS,

Clerk.

Calendar No. 339

115TH CONGRESS
2^D SESSION

H. R. 1865

AN ACT

To amend the Communications Act of 1934 to clarify that section 230 of such Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, and for other purposes.

MARCH 1, 2018

Read the second time and placed on the calendar