

Union Calendar No. 432

115TH CONGRESS
2^D SESSION

H. R. 1865

[Report No. 115-572, Part I]

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.

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2017

Mrs. WAGNER (for herself, Mrs. BEATTY, Mr. SMITH of New Jersey, Ms. CLARKE of New York, Mr. POE of Texas, Mrs. CAROLYN B. MALONEY of New York, Mr. ROYCE of California, Mrs. ROBY, Mr. KINZINGER, and Ms. JENKINS of Kansas) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

FEBRUARY 20, 2018

Additional sponsors: Mr. SMUCKER, Mr. STIVERS, Mr. WEBER of Texas, Mr. FLEISCHMANN, Mr. LANCE, Ms. SEWELL of Alabama, Mr. ROSKAM, Mr. ROUZER, Ms. MOORE, Mr. SHIMKUS, Mr. VARGAS, Mr. TURNER, Ms. ROSEN, Mrs. HARTZLER, Mr. EVANS, Mr. GARRETT, Mr. KATKO, Ms. KELLY of Illinois, Ms. WILSON of Florida, Mr. LAHOOD, Mr. COFFMAN, Mr. LUETKEMEYER, Mr. BISHOP of Michigan, Ms. STEFANIK, Mr. CRIST, Mr. CARBAJAL, Mrs. COMSTOCK, Mr. RODNEY DAVIS of Illinois, Mr. THOMAS J. ROONEY of Florida, Mr. GRAVES of Missouri, Mr. SMITH of Missouri, Mr. ZELDIN, Mr. MACARTHUR, Mr. PITTENGER, Mr. CONWAY, Mr. YOUNG of Iowa, Mr. WALKER, Mr. WALBERG, Mr. HARRIS, Mr. MESSER, Mr. SMITH of Texas, Mr. BRAT, Mr. POLIQUIN, Mr. VALADAO, Mrs. MIMI WALTERS of California, Mr. GIBBS, Ms. HERRERA BEUTLER, Mr. LONG, Mr. BUTTERFIELD, Mr. PAYNE, Ms. BASS, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. HANABUSA, Ms. BLUNT ROCH-ESTER, Mrs. LAWRENCE, Ms. DELAURO, Ms. MICHELLE LUJAN GRIS-HAM of New Mexico, Mr. HASTINGS, Mr. RICHMOND, Mrs. LOVE, Mr. CLAY, Mr. KILDEE, Mr. BROWN of Maryland, Ms. PLASKETT, Ms. ADAMS, Mr. THOMPSON of Mississippi, Mr. CLEAVER, Mr. BOST, Ms. TENNEY, Mr. HUDSON, Mrs. HANDEL, Mr. CUELLAR, Mr. COLE, Mr. BILIRAKIS, Mrs. NOEM, Mrs. BROOKS of Indiana, Ms. ROS-LEHTINEN, Mr. ROSS, Mr. KELLY of Mississippi, Mr. DONOVAN, Ms. KUSTER of New Hampshire, Mr. BISHOP of Georgia, Mrs. WATSON COLEMAN, Mr. PALMER, Mr. DAVIDSON, Ms. FOXX, Mrs. BLACK, Mr. CONNOLLY, Mr. FASO, Mr. ROTHFUS, Mr. MCCAUL, Mr. FITZPATRICK, Mrs. WALORSKI, Mr. REED, Mr. JOYCE of Ohio, Mr. BRADY of Pennsylvania, Mr. STEWART, Mr. FRANKS of Arizona, Ms. SINEMA, Mr. RUSH, Mr. MEEKS, Mr. O'HALLERAN, Mr. JOHNSON of Louisiana, Mr. POSEY, Mr. JENKINS of West Virginia, Mr. GONZALEZ of Texas, Mr. DANNY K. DAVIS of Illinois, Mr. MCGOVERN, Mr. GENE GREEN of Texas, Mr. LEWIS of Georgia, Mr. ESPAILLAT, Mr. KEATING, Mr. NOLAN, Ms. TITUS, Mr. SEAN PATRICK MALONEY of New York, Mr. SERRANO, Mr. DESJARLAIS, Mr. CURBELO of Florida, Mr. ADERHOLT, Mr. HULTGREN, Mrs. BLACKBURN, Mr. FORTENBERRY, Mr. KELLY of Pennsylvania, Mr. KING of Iowa, Mr. LAMALFA, Mr. LAMBORN, Mr. OLSON, Mr. PEARCE, Mr. SESSIONS, Mr. WILSON of South Carolina, Mr. COHEN, Ms. NORTON, Mr. FRELING-HUYSEN, Mr. PAULSEN, Mr. REICHERT, Mr. ROE of Tennessee, Mr. BRADY of Texas, Mr. FLORES, Mr. SHUSTER, Mr. HOLLINGSWORTH, Mr. BYRNE, Mr. AUSTIN SCOTT of Georgia, Mr. LAWSON of Florida, Miss RICE of New York, Mr. MULLIN, Mr. GUTHRIE, Mr. TIBERI, Mr. GOHMERT, Mr. RICE of South Carolina, Mr. WILLIAMS, Mr. BARLETTA, Mr. SENSENBRENNER, Mr. MARSHALL, Mr. BURGESS, Mr. KNIGHT, Mr. KUSTOFF of Tennessee, Mr. LUCAS, Ms. VELÁZQUEZ, Mr. CAPUANO, Mr. CULBERSON, Mr. PERLMUTTER, Ms. WASSERMAN SCHULTZ, Mr. COSTA, Mr. CALVERT, and Mr. YOHO

Deleted sponsor: Mr. MCNERNEY (added September 13, 2017; deleted September 25, 2017)

FEBRUARY 20, 2018

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

FEBRUARY 20, 2018

The Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on April 3, 2017]

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. SENSE OF CONGRESS.**

7 *It is the sense of Congress that—*

8 *(1) section 230 of the Communications Act of*
9 *1934 (47 U.S.C. 230; commonly known as the “Com-*
10 *munications Decency Act of 1996”) was never in-*
11 *tended to provide legal protection to websites that un-*
12 *lawfully promote and facilitate prostitution and con-*
13 *tribute to sex trafficking;*

14 *(2) websites that promote and facilitate prostitu-*
15 *tion have been reckless in allowing the sale of sex traf-*
16 *ficking victims and have done nothing to prevent the*
17 *trafficking of children and victims of force, fraud, and*
18 *coercion; and*

19 *(3) clarification of such section is warranted to*
20 *ensure that such section does not provide such protec-*
21 *tion to such websites.*

1 **SEC. 3. PROMOTION OF PROSTITUTION AND RECKLESS DIS-**
2 **REGARD OF SEX TRAFFICKING.**

3 (a) *PROMOTION OF PROSTITUTION.*—Chapter 117 of
4 title 18, United States Code, is amended by inserting after
5 section 2421 the following:

6 **“§2421A. Promotion or facilitation of prostitution**
7 **and reckless disregard of sex trafficking**

8 “(a) *IN GENERAL.*—Whoever uses or operates a facility
9 or means of interstate or foreign commerce or attempts to
10 do so with the intent to promote or facilitate the prostitu-
11 tion of another person shall be fined under this title, impris-
12 oned for not more than 10 years, or both.

13 “(b) *AGGRAVATED VIOLATION.*—Whoever uses or oper-
14 ates a facility or means of interstate or foreign commerce
15 with the intent to promote or facilitate the prostitution of
16 another person and—

17 “(1) promotes or facilitates the prostitution of 5
18 or more persons; or

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

22 shall be fined under this title, imprisoned for not more than
23 25 years, or both.

24 “(c) *CIVIL RECOVERY.*—Any person injured by reason
25 of a violation of section 2421A(b) may recover damages and
26 reasonable attorneys’ fees in an action before any appro-

1 *priate United States district court. Consistent with section*
2 *230 of the Communications Act of 1934 (47 U.S.C. 230),*
3 *a defendant may be held liable, under this subsection, where*
4 *promotion or facilitation of prostitution activity includes*
5 *responsibility for the creation or development of all or part*
6 *of the information or content provided through any inter-*
7 *active computer service.*

8 “(d) *MANDATORY RESTITUTION.—Notwithstanding*
9 *sections 3663 or 3663A and in addition to any other civil*
10 *or criminal penalties authorized by law, the court shall*
11 *order restitution for any offense under this section.*

12 “(e) *AFFIRMATIVE DEFENSE.—It shall be an affirma-*
13 *tive defense to a charge of violating subsection (a) where*
14 *the defendant proves, by a preponderance of the evidence,*
15 *that the promotion or facilitation of prostitution is legal*
16 *in the jurisdiction where the promotion or facilitation was*
17 *targeted.”.*

18 “(b) *TABLE OF CONTENTS.—The table of contents for*
19 *such chapter is amended by inserting after the item relating*
20 *to section 2421 the following:*

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

21 **SEC. 4. COMMUNICATIONS DECENCY ACT.**

22 *Section 230(e) of the Communications Act of 1934 (47*
23 *U.S.C. 230(e)) is amended by adding at the end the fol-*
24 *lowing:*

1 “(5) *NO EFFECT ON STATE LAWS CONFORMING*
2 *TO 18 U.S.C. 1591(A) OR 2421A.—Nothing in this section*
3 *shall be construed to impair or limit any charge in*
4 *a criminal prosecution brought under State law—*

5 “(A) *if the conduct underlying the charge*
6 *constitutes a violation of section 2421A of title*
7 *18, United States Code, and promotion or facili-*
8 *tation of prostitution is illegal in the jurisdic-*
9 *tion where the defendant’s promotion or facilita-*
10 *tion of prostitution was targeted; or*

11 “(B) *if the conduct underlying the charge*
12 *constitutes a violation of section 1591(a) of title*
13 *18, United States Code.”.*

14 **SEC. 5. SAVINGS CLAUSE.**

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

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