



## **Senate Approves Online Human Trafficking Bill To Amend Section 230 Of The CDA; President Trump Expected To Sign Bill Into Law**

March 30, 2018

On March 21, by a vote of 97 to 2, the Senate approved H.R. 1865, the Allow States and Victims to Fight Online Sex Trafficking Act (“FOSTA”). This bipartisan legislation, which makes targeted amendments to Section 230 of the Communications Decency Act (“CDA”), stems from an 18-month oversight investigation into online trafficking conducted by the Senate Permanent Subcommittee on Investigations, led by Chairman Rob Portman (R-OH) and Ranking Member Claire McCaskill (D-MO). Last month, the House of Representatives approved H.R. 1865, sponsored by Rep. Ann Wagner (R-MO), by a vote of 388 to 25. The Senate companion bill, S. 1693, the Stop Enabling Sex Traffickers Act of 2017, was introduced in August 2017 by Senators Rob Portman and Richard Blumenthal (D-CT).

FOSTA would amend the federal criminal code to impose penalties on a person who owns, manages, or operates a computer service to promote or facilitate prostitution of another person, with enhanced penalties if the offense relates to five or more persons or if the individual acts with reckless disregard. An injured person may recover damages and attorneys’ fees in a civil action. The bill provides for an exception in jurisdictions where promotion or facilitation of prostitution is legal. The bill specifies that Section 230 of the CDA does not limit a federal civil or criminal claim for conduct that constitutes sex trafficking, or a state criminal charge for conduct that promotes or facilitates prostitution. Additionally, the FOSTA amendments to Section 230 shall apply “regardless of whether the conduct alleged occurred, or is alleged to have occurred, before, on, or after such date of enactment.”

The Senate considered but did not adopt two amendments to the legislation proposed by Senator Ron Wyden (D-OR), who co-authored the original Section 230 of the CDA and who was one of two Senators opposing final passage. Senate Commerce Committee Chairman John Thune (R-SD) urged Senators to “reject any attempts to slow this bill down with amendments.” The first Wyden amendment, to provide \$20 million a year for five years to the Department of Justice to provide “the right people the resources they need to bring these monsters to justice,” was withdrawn after the Senate voted 71 to 28 to reject a motion to waive the budget act in order to consider the underlying amendment. Following this defeat, Senator Wyden withdrew his second “Good Samaritan” amendment to provide protections for companies that make good faith efforts

to find and moderate user-posted content. Senate debate on the bill and the Wyden amendments can be found [here](#).

Senator Portman noted that the bill was “supported by trafficking survivors, anti-human trafficking advocates and law enforcement, 50 Attorneys General, the civil rights community, faith-based groups, the larger tech community, and courts and judges who have made clear that it is Congress’ responsibility to act to protect sex trafficking victims.” Both the Cato Institute and the American Civil Liberties Union opposed FOSTA, as did the Electronic Frontier Foundation, which cautions that “[t]he bill is worded so broadly that it could even be used against platform owners that don’t know that their sites are being used for trafficking.” The concerns arise from the bill’s inclusion of “knowingly assisting, supporting, or facilitating a violation” in the definition of “participation in a venture” in 18 U.S.C. § 1591. In the context of the chain of electronic communications, “facilitating” could be interpreted broadly.

President Trump is expected to sign the legislation. According to a statement from the White House Press Secretary “applaud[ing]” the Senate for passing FOSTA: “This bipartisan piece of legislation takes an important step forward in fighting the despicable act of human trafficking. The legislation empowers Federal, State, and local prosecutors to hold websites accountable for supporting the sale of sex trafficking victims.”