

113TH CONGRESS
2D SESSION

S. 2536

To amend title 18, United States Code, to provide for enhanced criminal and civil remedies in the protection of children and other victims of commercial sexual exploitation and related crimes.

IN THE SENATE OF THE UNITED STATES

JUNE 26, 2014

Mr. KIRK (for himself and Mrs. FEINSTEIN) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to provide for enhanced criminal and civil remedies in the protection of children and other victims of commercial sexual exploitation and related crimes.

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 “Stop Advertising Vic-

5 tims of Exploitation Act of 2014” or the “SAVE Act”.

6 **SEC. 2. FINDINGS AND CONSTRUCTION OF PROVISIONS.**

7 Congress finds that—

1 (1) sex trafficking is modern day slavery and
2 violates the Thirteenth Amendment to the Constitu-
3 tion of the United States;

4 (2) this Act and the amendments made by this
5 Act are enacted as an exercise of the authority of
6 Congress to enforce the Thirteenth Amendment to
7 the Constitution of the United States by appropriate
8 legislation;

9 (3) this Act and the amendments made by this
10 Act are also enacted as an exercise of the authority
11 of Congress under the commerce clause of section 8
12 of article I of the Constitution of the United States
13 to regulate, by appropriate legislation, the instru-
14 mentalities of interstate and foreign commerce, as
15 well as that which directly and materially affects
16 interstate and foreign commerce; and

17 (4) this Act and the amendments made by this
18 Act should be liberally construed to effectuate its re-
19 medial purposes to the full extent permitted by the
20 First Amendment to the Constitution of the United
21 States, including the commercial speech doctrine.

1 **SEC. 3. PROTECTION OF CHILDREN AND OTHER VICTIMS**
 2 **OF COMMERCIAL SEXUAL EXPLOITATION.**

3 (a) IN GENERAL.—Chapter 77 of title 18, United
 4 States Code, is amended by inserting after section 1591
 5 the following:

6 **“§ 1591A. Commercial sexual exploitation**

7 “(a) DEFINITIONS.—In this section, the following
 8 definitions apply:

9 “(1) ADULT ADVERTISEMENT.—The term
 10 ‘adult advertisement’ means any advertisement
 11 that—

12 “(A) is subject to the recordkeeping re-
 13 quirements under section 2257; or

14 “(B) is designed, in whole or in part, to in-
 15 duce a lawful or unlawful commercial exchange
 16 for—

17 “(i) a sexual act or sexual contact, as
 18 those terms are defined in section 2246;

19 “(ii) sexually explicit conduct, as de-
 20 fined in section 2256;

21 “(iii) a commercial sex act, as defined
 22 in section 103 of the Trafficking Victims
 23 Protection Act of 2000 (22 U.S.C. 7102);
 24 or

25 “(iv) the goods or services of an adult
 26 escort or erotic performer involving any

1 commercial exchange described in clause
2 (i), (ii), or (iii).

3 “(2) ADVERTISEMENT.—The term ‘advertise-
4 ment’ includes any written or verbal statement, illus-
5 tration, or depiction in any medium which is de-
6 signed, in whole or in part, to induce a lawful or un-
7 lawful commercial exchange of a good or service for
8 money, property, or another item of value, including
9 another good or service.

10 “(3) COMMERCIALLY PROMOTE.—The term
11 ‘commercially promote’ means to aid, abet, counsel,
12 command, induce, procure, or cause the creation,
13 placement, distribution, publication, or maintenance
14 of any advertisement, or any series of advertise-
15 ments, in exchange for any financial gain, property,
16 or other item of value, obtained from any informa-
17 tion content provider of any such advertisement or
18 any series of advertisements.

19 “(4) COMMON CARRIER; TELECOMMUNICATIONS
20 CARRIER.—The terms ‘common carrier’ and ‘tele-
21 communications carrier’ have the meanings given
22 those terms in section 3 of the Communications Act
23 of 1934 (47 U.S.C. 153).

24 “(5) INFORMATION CONTENT PROVIDER.—The
25 term ‘information content provider’ has the meaning

1 given the term in section 230 of the Communica-
2 tions Act (47 U.S.C. 230).

3 “(6) INTERACTIVE ADVERTISING NETWORK
4 SERVICE PROVIDER.—The term ‘interactive adver-
5 tising network service provider’ means an inde-
6 pendent, third party broker of online, wireless, or
7 interactive television advertising, including banners,
8 sponsorships, email, keyword searches, slotting fees,
9 and interactive television commercials, and not in-
10 cluding classified advertising or a website referral
11 link.

12 “(7) INTERNET ACCESS SERVICE; INTERNET IN-
13 FORMATION LOCATION TOOL.—The terms ‘Internet
14 access service’ and ‘Internet information location
15 tool’ have the meanings given those terms in section
16 231 of the Communications Act of 1934 (47 U.S.C.
17 231).

18 “(8) PERSON.—The term ‘person’ includes any
19 individual or entity that is capable of holding legal
20 or beneficial interest in property.

21 “(9) STATE.—The term ‘State’ means any
22 State of the United States, the District of Columbia,
23 the Commonwealth of Puerto Rico, any territory or
24 possession of the United States, and any political

1 subdivision, department, agency, or instrumentality
2 of any such entity.

3 “(b) OFFENSE.—

4 “(1) IN GENERAL.—It shall be unlawful for a
5 person to use any means or facility of interstate or
6 foreign commerce to—

7 “(A) knowingly sell, commercially promote,
8 place, or maintain an adult advertisement, or
9 any series of adult advertisements in a medium
10 whose predominant purpose or use is to facili-
11 tate commercial transactions; and

12 “(B) act with reckless disregard of the fact
13 that the adult advertisement, or the series of
14 adult advertisements, facilitates or is designed
15 to facilitate—

16 “(i) an offense under paragraph (1)
17 or (2) of section 1591(a) in which the per-
18 son recruited, enticed, harbored, trans-
19 ported, provided, obtained, or maintained
20 has not attained the age of 18 years at the
21 time of such offense; or

22 “(ii) an offense in violation of any
23 provision of State law prohibiting felony
24 offenses relating to child pimping, child

1 prostitution, child sexual abuse, assault on
2 children, or the sex trafficking of children.

3 “(2) CRIMINAL PENALTY.—Any person who vio-
4 lates paragraph (1) shall be fined under this title,
5 imprisoned not more than 10 years, or both, for
6 each such violation.

7 “(3) LIMITATIONS ON LIABILITY.—

8 “(A) GENERIC SEARCH OR UTILITY SERV-
9 ICES.—An Internet access service provider,
10 Internet browser or mobile browser provider,
11 external search engine provider, external Inter-
12 net information location tool provider (including
13 a domain name registry or other domain name
14 or root zone service provider), interactive adver-
15 tising network service provider, common carrier,
16 telecommunications carrier, or other such ge-
17 neric search or utility provider shall not incur
18 any criminal or civil liability under this sub-
19 section or be subject to the recordkeeping re-
20 quirements under subsection (c) solely based on
21 providing such generic search or utility services.

22 “(B) VICTIMS YOUNGER THAN 18 YEARS
23 OF AGE.—For the purposes of paragraph (1),
24 any defendant in full compliance with sub-
25 section (c) may not be found reckless as to the

1 fact of the age element of a minor victim of a
2 predicate offense specified in paragraph (1).

3 “(4) ESTOPPEL.—A final judgment or decree
4 rendered in favor of the United States in any crimi-
5 nal proceeding brought by the United States under
6 this section shall estop the defendant from denying
7 the essential allegations of the criminal offense in
8 any subsequent civil proceeding, but a prior criminal
9 proceeding is not a prerequisite to the commence-
10 ment of any civil action under this chapter or any
11 other provision of law.

12 “(c) RECORDKEEPING FOR ADULT ADVERTISE-
13 MENTS.—

14 “(1) ADULT ADVERTISING VERIFICATION RE-
15 QUIREMENTS.—Subject to subsection (b)(3)(A), any
16 person who uses any means or facility of interstate
17 or foreign commerce to sell, commercially promote,
18 place, or maintain an adult advertisement, or a se-
19 ries of adult advertisements, shall—

20 “(A) before selling, commercially pro-
21 moting, or placing the adult advertisement, or
22 series of adult advertisements—

23 “(i) verify the identity of each person
24 purchasing advertisement space to post

1 such adult advertisement, or series of adult
2 advertisements, by—

3 “(I) obtaining confirmation of
4 the identity of the person;

5 “(II) obtaining a copy of a gov-
6 ernment-issued document containing a
7 photograph, the name, and the date of
8 birth of the person; and

9 “(III) obtaining such other indi-
10 cial of the identity of the person as
11 may be required by regulation; and

12 “(ii) create and maintain for not less
13 than 7 years individually identifiable
14 records pertaining to each person described
15 in clause (i) that include the information
16 described in clause (i) and such other iden-
17 tifying information as may be required by
18 regulation;

19 “(B) before selling, commercially pro-
20 moting, or placing the adult advertisement, or
21 series of adult advertisements—

22 “(i) verify the identity of each person
23 depicted within such adult advertisement,
24 or series of adult advertisements, by taking

1 the actions described in subclauses (I)
2 through (III) of subparagraph (A)(i); and

3 “(ii) create and maintain for not less
4 than 7 years individually identifiable
5 records pertaining to each person described
6 in clause (i) that include the information
7 described in subparagraph (A)(i) and such
8 other identifying information as may be re-
9 quired by regulation; and

10 “(C) before selling, commercially pro-
11 moting, or placing the adult advertisement, or
12 series of adult advertisements—

13 “(i) verify that each person whose
14 goods or services are advertised by such
15 adult advertisement, or series of adult ad-
16 vertisements, is not less than 18 years of
17 age by obtaining such indicia of the iden-
18 tity of the person as may be required by
19 regulation; and

20 “(ii) create and maintain for not less
21 than 7 years individually identifiable
22 records pertaining to information described
23 in clause (i) that include such identifying
24 information as may be required by regula-
25 tion.

1 “(2) RECORDKEEPING.—Any person to whom
2 paragraph (1) applies shall—

3 “(A) maintain the records required under
4 paragraph (1) at the business premises of the
5 person, or at such other place as the Attorney
6 General may by regulation prescribe; and

7 “(B) make the records available to the At-
8 torney General, any designee of the Attorney
9 General, the attorney general of a State, and
10 any designee of the attorney general of a State
11 for inspection at all reasonable times.

12 “(3) USE OF INFORMATION.—

13 “(A) IN GENERAL.—No information or evi-
14 dence obtained from a record required to be
15 created or maintained by an individual under
16 this subsection shall be used, directly or indi-
17 rectly, as evidence against that individual in a
18 criminal proceeding where such use would vio-
19 late that individual’s constitutional privilege
20 against compulsory self-incrimination.

21 “(B) EXCEPTION.—Information or evi-
22 dence obtained from a record required to be
23 created or maintained by an individual under
24 this subsection may be used against the indi-
25 vidual in a prosecution or other action for a vio-

1 lation of this subsection or for a violation of
2 any applicable provision of law relating to the
3 furnishing of false information.

4 “(4) NOTICE REQUIREMENT.—

5 “(A) IN GENERAL.—Any person to whom
6 paragraph (1) applies shall cause to be affixed
7 to each adult advertisement sold, commercially
8 promoted, placed, or maintained by the person,
9 in such manner and in such form as the Attor-
10 ney General shall by regulation establish, a
11 statement describing where the records required
12 by this subsection may be located with respect
13 to each person depicted or advertised within
14 such adult advertisement or series of adult ad-
15 vertisements.

16 “(B) ORGANIZATIONS.—If the person to
17 whom paragraph (1) applies is an organization,
18 the statement required by this paragraph shall
19 include the name, title, and business address of
20 the individual employed by the organization re-
21 sponsible for maintaining the records required
22 by this subsection.

23 “(5) REGULATIONS.—The Attorney General
24 shall issue appropriate regulations to carry out this
25 section, which shall include regulations directing any

1 person to whom paragraph (1) applies to take rea-
2 sonable measures to ensure the means or facility of
3 interstate or foreign commerce used by the person is
4 not being used to facilitate prostitution or sexual ex-
5 ploitation of children by—

6 “(A) reviewing postings before they are
7 published to ensure the postings do not offer
8 minors for commercial sex or contain sexually
9 explicit images of minors, and immediately re-
10 moving such postings;

11 “(B) prohibiting the use of euphemisms
12 and code words for, or used as a part of, a com-
13 mercial exchange described in subsection
14 (a)(1)(B);

15 “(C) preventing the reposting of previously
16 banned or removed postings or postings by per-
17 sons who repeatedly post inappropriate content;

18 “(D) requiring a person who posts an
19 adult advertisement to provide a valid telephone
20 number and credit card number (regardless of
21 whether a fee is charged for the posting);

22 “(E) if a fee is charged for posting an
23 adult advertisement, prohibiting the use of
24 anonymous payment methods, including algo-

1 rithm currencies, virtual currencies, prepaid
2 cards, and gift cards;

3 “(F) requiring the reporting of any in-
4 stances of apparent child sexual exploitation or
5 online enticement of children to law enforce-
6 ment agencies and the National Center for
7 Missing and Exploited Children;

8 “(G) including information in the means or
9 facility of interstate or foreign commerce direct-
10 ing users to report information about the pros-
11 titution of children to the National Center for
12 Missing and Exploited Children and the Na-
13 tional Human Trafficking Resource Center; and

14 “(H) affixing to each adult advertisement
15 placed or maintained on the means or facility of
16 interstate or foreign commerce, in such manner
17 and in such form as the Attorney General shall
18 by regulation establish, contact information re-
19 garding how to contact the CyberTipline of the
20 National Center for Missing and Exploited Chil-
21 dren.

22 “(6) CRIMINAL PENALTY.—

23 “(A) IN GENERAL.—Any person to whom
24 paragraph (1) applies, shall be fined not less
25 than \$250,000 and not more than \$350,000 for

1 each violation, imprisoned not more than 5
2 years, or both, if such person—

3 “(i) fails to create or maintain the
4 records as required by this subsection or
5 by any regulation promulgated under this
6 subsection;

7 “(ii) knowingly makes any false entry
8 in or knowingly fails to make an appro-
9 priate entry in, any record required by this
10 subsection or any regulation promulgated
11 under this section;

12 “(iii) knowingly fails to comply with
13 the provisions of this subsection or any
14 regulation promulgated under this section;
15 or

16 “(iv) refuses to permit the Attorney
17 General, a designee of the Attorney Gen-
18 eral, the attorney general of a State, or a
19 designee of the attorney general of a State
20 to conduct an inspection under this sub-
21 section.

22 “(B) CRIMINAL PENALTY FOR REPEAT OF-
23 FENDERS.—In the case of a second or subse-
24 quent conviction of a violation described in sub-
25 paragraph (A) by a person to whom paragraph

1 (1) applies, the person shall be fined not less
2 than \$350,000 and not more than \$500,000 for
3 each such violation, imprisoned for not more
4 than 15 years, or both.”.

5 (b) CRIMINAL FORFEITURE.—Section 982(a) of title
6 18, United States Code, is amended by adding at the end
7 the following:

8 “(9) The court, in sentencing a defendant con-
9 victed of an offense under section 1591A, shall order
10 that the defendant forfeit to the United States any
11 real or personal property—

12 “(A) used or intended to be used to com-
13 mit, to facilitate, or to promote the commission
14 of such offense; and

15 “(B) constituting, derived from, or trace-
16 able to the gross proceeds that the defendant
17 obtained directly or indirectly as a result of the
18 offense.”.

19 (c) CIVIL ACTION.—Section 1595(a) of title 18,
20 United States Code, is amended by inserting “or person
21 (as defined in section 1591A)” after “individual”.

22 (d) EXTRATERRITORIAL JURISDICTION.—Section
23 1596(a) of title 18, United States Code, is amended by
24 striking “or 1591” and inserting “1591, or 1591A”.

1 (e) DUTY TO REPORT.—Section 2258A of title 18,
2 United States Code, is amended—

3 (1) by striking subsection (a)(2) and inserting
4 the following:

5 “(2) FACTS OR CIRCUMSTANCES.—The facts or
6 circumstances described in this paragraph are any
7 facts or circumstances—

8 “(A) from which there is an apparent vio-
9 lation of—

10 “(i) section 1466A;

11 “(ii) section 2251, 2251A, 2252,
12 2252A, 2252B, or 2260 that involves child
13 pornography; or

14 “(iii) section 2422(b); or

15 “(B) that involve commercial sexual exploi-
16 tation of children or online enticement of chil-
17 dren.”;

18 (2) in subsection (b)(1), by striking “violated a
19 Federal law described in subsection (a)(2)” and in-
20 serting “violated a Federal law described in sub-
21 section (a)(2)(A) or engaged in conduct described in
22 subsection (a)(2)(B)”;

23 (3) by striking subsection (e) and inserting the
24 following:

1 “(e) FAILURE TO REPORT.—An electronic commu-
 2 nication service provider or remote computing service pro-
 3 vider that fails to make a report required under subsection
 4 (a)(1), with reckless disregard of the requirement to make
 5 a report required under subsection (a)(1), shall be fined—

6 “(1) in the case of an initial such failure to
 7 make a report, not more than \$250,000; and

8 “(2) in the case of any second or subsequent
 9 such failure to make a report, not more than
 10 \$500,000.”.

11 (f) FALSE STATEMENTS.—Section 1001(a) of title
 12 18, United States Code, is amended, in the matter fol-
 13 lowing paragraph (3), by adding at the end the following:
 14 “If the matter relates to an offense under section 1591A,
 15 the term of imprisonment imposed under this section shall
 16 be not more than 15 years.”.

17 (g) TECHNICAL AND CONFORMING AMENDMENT.—
 18 The table of sections for chapter 77 of title 18, United
 19 States Code, is amended by inserting, after the item relat-
 20 ing to section 1591, the following:

“1591A. Commercial sexual exploitation.”.

21 **SEC. 4. SEVERABILITY.**

22 If any provision of this Act or any amendment made
 23 by this Act, or any application of such provision or amend-
 24 ment to any person or circumstance, is held to be uncon-
 25 stitutional, the remainder of the provisions of this Act and

- 1 the amendments made by this Act and the application of
- 2 the provision or amendment to any other person or cir-
- 3 cumstance shall not be affected.

