

## Senate Sex Trafficking Bill Criminalizes Online Publishers and Creates State-Accessible Sex Worker Registries

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Sen. Mark Kirk/Facebook

Last week, Senators Mark Kirk (R-Ill.) and Dianne Feinstein (D-Calif.) introduced a bill aimed at cracking down on child sex trafficking that could ultimately harm web publishers, adult entertainers, and free speech. The bill sets up onerous and invasive new registry requirements for those who post and host adult service advertisements. And it holds online publishers criminally liable not only for illegal activity facilitated through their ad sections but also for failing to keep—and make available to attorneys general—proper records on all adults advertising legal or illegal erotic services.

The "Stop Advertising Victims of Exploitation (SAVE) Act"—crafted after a related bill that passed the House in May—makes it a federal crime for any content platform to host an advertisement that "facilitates or is designed to facilitate" sex acts with anyone under 18 years old. At first blush, that may sound unobjectionable: *Of course* it should be a crime to sell minors for sex. But, of course, that already is a crime. This bill is about holding *web platforms* (like Craigslist) criminally liable for anything that criminals may post to them.

"This is a major liability risk for operators of user-generated content platforms, who host high volumes of content and have little to no control over what users decide to upload," notes Emma Llansó at the Center for Democracy and Technology. With penalties including up to 10 years in prison on the line, sites might decide just to prohibit ads of a sexual nature—including personals, where many sexual services ads end up running—altogether.

The SAVE Act would also require all sites that host adult advertising (whether paid or free/user-generated) to review ads before publication, request a valid telephone number and credit card number from each poster, "prohibit the use of euphemism and codewords" in ads, and prohibit the use of prepaid debit cards or cryptocurrencies in placing paid ads. For sites that run *paid* adult advertisements, publishers would be responsible for verifying the identity of every person who placed an adult ad by obtaining a copy of a government-issued ID containing their name, photo, and date of birth. The publisher would have to hold on to these records for seven years and make them "available to the (U.S.) Attorney General, any designee of the Attorney General, the attorney general of a State, and any designee of the attorney general of a State for inspection at all reasonable times."

The bill insists that information won't be used against registrants in criminal proceedings unrelated to sex trafficking. But knowing how fond government and law enforcement officials are of privacy and keeping promises, you can see why those advertising adult services—many of which are for perfectly legal activities, such as phone sex lines, dominatrix services, and stripping; many of which aren't—may be reluctant to hand over such information.

"An online identity verification requirement would unquestionably have a chilling effect on adults' willingness to engage in communications about lawful goods and services and would be a

willingness to engage in communications about lawful goods and services and would be a significant intrusion into their right to privacy," writes Llansó.

Similar identification requirements in the Child Online Protection Act led to that law being struck down due, in part, to the burden these requirements place on speakers, listeners, and hosts of protected speech.

Illegal immigrants and others without government issued IDs would be barred from legal advertising online, leaving them to rely on more dangerous methods of finding clients. Those running organized, professional sex trafficking organizations, however, are probably savvy enough to get and submit decent fake IDs (or simply turn to more underground methods of advertising online themselves).

As adult workers shy away from placing ads, online publishers will lose money on one of the last classified sections that's been making any money. Meanwhile, they'll face a minimum fine of \$250,000 for improper record-keeping and jail time if anything illegal slips through. Ultimately nobody wins—except the politicians who *appear to be* getting tough on the child sex trafficking "epidemic". On his Facebook page June 30, Sen. Kirk posted:

Every year, 100,000 children are at risk of being trafficked against their will in the United States. Learn more to help: <http://kirk.senate.gov/notforsale> #NotForSale

There's not any way to refute Kirk's "100,000 children" claim, because Kirk doesn't define what "at risk of" means. Theoretically, *all children* in the United States are *at risk of* being trafficked. Theoretically, I'm at risk of drowning in a bucket or getting eaten by a cannibal.

None of these things, however, are terribly likely to happen. Or even marginally likely to happen. The likelihood of a U.S. child being kidnapped by a stranger *for any reason* is incredibly small (about 100 children each year, or 3 percent of all kidnapping cases).

But Sen. Kirk's website is full of dubious numbers and scary sounding pronouncements. "Backpage.com sells modern day slavery," it proclaims. In one press release, Kirk insists that 100 percent of "dates" set up through Backpage.com are for prostitution, "often child prostitution." The site intersperses videos of sad-eyed children and forlorn teen girls with statistics about adult prostitution and adult advertisements in general. And though he touts the SAVE Act as a way to fight child sex slavery, he mentions nothing about who the bill actually targets or how it actually works.

For a more detailed look at the SAVE Act's flaws, check out this analysis from The Center for Democracy and Technology. The American Civil Liberties Union (ACLU) has a thorough

takedown of the House version of this legislation. "Lawmaking is messy stuff, and mistakes like this happen," the ACLU offered charitably. "Working to combat coerced or underage prostitution is incredibly important; however, legislation must be carefully drafted to be sure to protect our free speech rights online."

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