

116TH CONGRESS
2D SESSION

S. 4983

To amend chapter 77 of title 18, United States Code, to combat human trafficking and to strengthen civil remedies for survivors.

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2020

Mr. HAWLEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 77 of title 18, United States Code, to combat human trafficking and to strengthen civil remedies for survivors.

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 “Survivors of Human
5 Trafficking Fight Back Act of 2020”.

6 **SEC. 2. VISUAL DEPICTIONS OF SEX ACTS OBTAINED BY CO-**
7 **ERCION OR DECEPTION.**

8 Section 1591 of title 18, United States Code, is
9 amended—

1 (1) by striking “subsection (e)(2)” each place it
2 appears and inserting “subsection (g)(2)”;

3 (2) by redesignating subsection (e) as sub-
4 section (g);

5 (3) by inserting after subsection (d) the fol-
6 lowing:

7 “(e)(1)(A) Whoever knowingly distributes, or pos-
8 sesses with the intent to distribute, in or affecting inter-
9 state or foreign commerce or using a means of interstate
10 or foreign commerce (including the internet), a visual de-
11 piction of a sex act by another person who is not less than
12 18 years of age, knowing or in reckless disregard of the
13 fact that the participation of that person in the sex act
14 was induced by fraud, force, threats of force, deception,
15 or coercion described in subsection (g)(2), or any combina-
16 tion of such means, shall be punished as provided in para-
17 graph (4).

18 “(B) Whoever knowingly distributes, or possesses
19 with the intent to distribute, in or affecting interstate or
20 foreign commerce or using a means of interstate or foreign
21 commerce (including the internet), a visual depiction of
22 a sex act by another person or a visual depiction of an-
23 other person the production of which involved conduct that
24 would violate section 1801(a), knowing or in reckless dis-
25 regard of the fact that the person did not consent to the

1 distribution of the visual depiction, shall be punished as
2 provided in paragraph (4).

3 “(2) Nothing in paragraph (1) shall be construed to
4 limit the ability to prosecute under subsection (a) of this
5 section or chapter 110 an offense involving a victim of an
6 offense described in paragraph (1) of this subsection who
7 is less than 18 years of age.

8 “(3) Paragraph (1) shall not apply to any distribu-
9 tion made in the public interest, including distributions
10 that constitute a matter of public concern or distributions
11 that are made as part of a lawful, common practice, such
12 as legal proceedings, reports to law enforcement, or med-
13 ical treatment.

14 “(4) Whoever violates paragraph (1) shall be fined
15 under this title and imprisoned for any term of years not
16 less than 5.

17 “(5)(A)(i) Any person who operates or provides an
18 internet website, web service, or web application that dis-
19 plays visual depictions of sex acts shall—

20 “(I) provide a notice process described in sub-
21 paragraph (B) for individuals to make the person
22 aware that the person is distributing content created
23 in violation of this section; and

24 “(II) designate an agent of the person to re-
25 ceive notice under such a notice process and make

1 available on the website, web service, or web applica-
2 tion operated or provided by the person, in a loca-
3 tion accessible to the public, the name, address,
4 phone number, and electronic mail address of the
5 agent.

6 “(ii) Any person who violates subclause (I) or (II)
7 of clause (i) shall be punished as provided in subparagraph
8 (C).

9 “(B) A notice process described in this subparagraph
10 is an operation that readily enables a person depicted or
11 authorized representative of the person depicted to provide
12 to the designated agent substantially the following:

13 “(i) Identification of the visual depiction or de-
14 pictions claimed to include a sex act, or for which
15 the production is claimed to involved conduct that
16 would violate section 1801(a), that meets the re-
17 quirements of paragraph (1).

18 “(ii) Identification of the sex act in the visual
19 depiction, or the portion of the visual depiction the
20 production of which involved conduct that would vio-
21 late section 1801(a), that meets the requirements of
22 paragraph (1).

23 “(iii) Information reasonably sufficient to per-
24 mit the person receiving the notice to contact the
25 person depicted or authorized representative of that

1 person, such as an address, telephone number, or
2 electronic mail address.

3 “(iv) A brief statement—

4 “(I) that the person depicted or authorized
5 representative of that person has a good faith
6 belief that the visual depiction includes a sex
7 act involving the person depicted, or the pro-
8 duction of the visual depiction involved conduct
9 that would violate section 1801(a), that meets
10 the requirements of paragraph (1); and

11 “(II) why the person depicted or author-
12 ized representative of that person has that be-
13 lief.

14 “(C) Whoever violates subparagraph (A) shall be
15 fined under this title, imprisoned for not more than 3
16 years, or both.

17 “(D) A person operating or providing an internet
18 website, web service, or web application shall not be liable
19 to any other person for any claim based on the operator
20 or provider’s good faith disabling of access to, or removal
21 of, material the operator or provider believes includes a
22 sex act, or believes the production of which involved con-
23 duct that would violate section 1801(a), meeting the re-
24 quirements of paragraph (1).

1 “(6) It shall not be a defense to an alleged violation
2 of paragraph (1) that a person did not receive notice under
3 the notice process described in paragraph (5)(B).

4 “(7) For purposes of this subsection, the term ‘sex
5 act’ means—

6 “(A) sexually explicit conduct, as defined in sec-
7 tion 2256(2)(A);

8 “(B) a sexual act, as defined in section
9 2246(2); and

10 “(C) the lascivious exhibition of the post-pubes-
11 cent female nipple or gametes on the body.

12 “(f)(1) An individual who is aggrieved of a violation
13 of subsection (e)(1) may bring a civil action in an appro-
14 priate district court of the United States seeking appro-
15 priate relief.

16 “(2) Whoever violates the civil law of a State, terri-
17 tory, or Indian Tribe by coercing an individual into par-
18 ticipating in a sex act shall be liable under Federal law
19 for such a violation and subject to the same civil remedies
20 that would be available under State, territorial, or Tribal
21 law to the party injured if—

22 “(A) the sex act is a commercial sex act that
23 occurred in or affecting interstate or foreign com-
24 merce; or

1 “(B) a visual depiction of the sex act is distrib-
 2 uted by the defendant in or affecting interstate or
 3 foreign commerce or using a means of interstate or
 4 foreign commerce (including the internet), knowing
 5 or in reckless disregard of the fact that the indi-
 6 vidual was coerced into participating in the sex act
 7 depicted.

8 “(3) In this subsection—

9 “(A) the terms ‘coercing an individual into par-
 10 ticipating in a sex act’ and ‘coerced into partici-
 11 pating in a sex act’, with respect to an individual,
 12 means the individual was induced by force, threats
 13 of force, fraud, deception, or coercion (as those
 14 terms are defined under the law of the applicable
 15 State, territory, or Tribe) to participate in a sex act;
 16 and

17 “(B) the term ‘sex act’ has the meaning given
 18 that term in subsection (e).”; and

19 (4) in subsection (g), as so redesignated—

20 (A) by redesignating paragraphs (4), (5),
 21 and (6) as paragraphs (5), (6), and (7), respec-
 22 tively; and

23 (B) by inserting after paragraph (3) the
 24 following:

1 “(4) The term ‘deception’ means intentionally
2 misleading a participant in a sex act about whether
3 a visual depiction of the sex act will be created or
4 about whether or how broadly a visual depiction will
5 be distributed.”.

6 **SEC. 3. SEVERABILITY.**

7 If any provision of this Act or any amendment made
8 by this Act, or any application of such provision or amend-
9 ment to any person or circumstance, is held to be uncon-
10 stitutional or otherwise unlawful, the remainder of the
11 provisions of this Act and the amendments made by this
12 Act, and the application of the provision or amendment
13 to any other person or circumstance, shall not be affected.

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