



National Alliance to
End Sexual Violence

Discussion Paper: SESTA-FOSTA

August 2018

Summary: SESTA-FOSTA is federal legislation that became law in April 2018. It combines two bills, The Stop Enabling Sex Traffickers Act (SESTA) and Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA). The House bill, H.R. 1865, is the version that ultimately passed. While the bill was originally drafted to make sure survivors of trafficking could sue websites like Backpage they view as key contributors to their victimization, the bill was broadened significantly before passage to cover advertising prostitution much more generally. While some advocacy groups support the legislation on behalf of trafficking survivors, other strongly oppose the legislation because they believe it increases the vulnerability of sex workers, many of whom are survivors, to violence and exploitation.

Discussion: The Stop Enabling Sex Traffickers Act (SESTA) was originally intended to support survivors of trafficking who had been unsuccessful in suing websites like Backpage in court by creating civil liability for internet providers that knowingly advertised people being trafficked. Senator Rob Portman (R-OH) and Senator Richard Blumenthal (D-CT) introduced a refined version of SESTA in August 2017 designed to withstand a first amendment challenge. The bill was heard in the Commerce, Science, and Transportation committee in January 2018.

The House bill, Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), was first introduced by Rep. Anne Wagner (R-MO) and bipartisan co-sponsors in April of 2017. It was very similar to the Senate bill as first introduced. However, during the House Judiciary hearing of the bill in February 2018, Chairman Bob Goodlatte (R-VA) offered, and the committee passed, an amendment that significantly broadened the bill to include advertising of prostitution on websites much more generally. This version of the bill, with House leadership support, passed the House on February 27, the Senate on March 21, and was signed into law by the President on April 11, 2018.

NAESV supported SESTA as introduced in the Senate because of the expressed needs of survivors to be able to take action against third parties who had facilitated their victimization. NAESV did not take a position on amended versions of the House bill or the legislation that ultimately passed.

Larger websites reacted quickly to the legislation by taking down sections of their sites to avoid liability. Some smaller sites have folded due to the risk of criminal and civil penalties included in the new law. Federal authorities took down Backpage before FOSTA-SESTA was signed. Sex

workers and some advocacy groups have pointed out that the legislation increases the vulnerability of sex workers to sexual violence and exploitation since they say they are now less able to use websites to screen potential “johns” and share information about offenders. Other advocacy group such as Rights4Girls remain supportive of the legislation saying that websites that facilitate and profit from child sex trafficking had been shielded from accountability, allowing online trafficking to proliferate and leaving survivors without legal recourse. Those protections could have passed, however, without the expansion of the legislation to include prostitution more broadly.

Some advocacy groups discuss prostitution/sex work and sex trafficking as essentially the same thing. Other groups make more of a distinction between human trafficking and other forms of prostitution/sex work. Issues around force, coercion, life circumstances, poverty, sexism, and demand are all key points of discussion.

In addition to the concerns raised about increased vulnerability of sex workers, there have been first amendment and internet freedom concerns raised about the legislation; concerns raised that the legislation drives sex trafficking more underground and makes it more difficult for law enforcement to investigate; and at least one lawsuit.

Original provisions of SESTA: The original Senate bill amended the Communications Act of 1934 to specify that communications decency provisions protecting providers from liability for the private blocking or screening of offensive material shall not be construed to impair or limit civil action or criminal prosecution under state or federal criminal or civil laws relating to sex trafficking of children or sex trafficking by force, fraud, or coercion. It also amended the federal criminal code to specify that the violation for benefiting from "participation in a venture" engaged in sex trafficking of children, or sex trafficking by force, fraud, or coercion, includes knowingly assisting, supporting, or facilitating the violation.

Main provisions of SESTA-FOSTA as passed: The bill amends the federal criminal code to add a new section that imposes penalties—a fine, a prison term of up to 10 years, or both—on a person who, using a facility or means of interstate or foreign commerce, owns, manages, or operates an interactive computer service (or attempts or conspires to do so) to promote or facilitate the prostitution of another person. Additionally, it establishes enhanced penalties—a fine, a prison term of up to 25 years, or both—for a person who commits the offense in one of the following aggravating circumstances: (1) promotes or facilitates the prostitution of five or more persons, or (2) acts with reckless disregard that such conduct contributes to sex trafficking. A person injured by an aggravated offense may recover damages and attorneys' fees in a federal civil action.

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The National Alliance to End Sexual Violence is the voice in Washington for the 56 state and territorial sexual assault coalitions and 1300 rape crisis centers working to end sexual violence and support survivors. For more information, please contact Ebony Tucker, Advocacy Director, at ebony@endsexualviolence.org.