ASSEMBLY CONCURRENT RESOLUTION No. 133

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:
Assemblywoman CAROL A. MURPHY
District 7 (Burlington)

SYNOPSIS

Urges Congress to amend the "Communication Decency Act of 1996."

CURRENT VERSION OF TEXT

As introduced.

A CONCURRENT RESOLUTION urging the Congress to amend the "Communications Decency Act of 1996."

WHEREAS, The "Communication Decency Act of 1996," 47 U.S.C. section 230 (the "CDA") provides that no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider, effectively immunizing internet service providers and users from liability for tortuous acts committed by third parties; and

WHEREAS, Section 230 of the CDA goes on to provide that no liability may be imposed under any state or local law that is inconsistent with the intention of the CDA; and

WHEREAS, The broader original intent of the CDA was to protect children from internet pornography, but is now used as a shield by those who would profit from prostitution and crimes against children; and

WHEREAS, It is well within the traditional jurisdiction of state and local authorities to investigate and prosecute those who promote prostitution and endanger the welfare of children; and

WHEREAS, Two recent United States District Court rulings, Backpage.com, LLC v. McKenna, 881 F. Supp. 2d 1262 (W.D. Wash. 2012) and Backpage.com, LLC v. Cooper, 2013 U.S. Dist. LEXIS 55100, 2013 WL 1558785 (M.D. Tenn. Jan. 3, 2013) struck down state statutes in Washington and Tennessee respectively, criminalizing advertizing sexual abuse of a minor; and

WHEREAS, On August 20, 2013 the United States District Court for the District of New Jersey in the case of Backpage.com, LLC v. Hoffman, 2013 U.S. Dist. LEXIS 119811, WL 4502097 granted a motion to enjoin the enforcement of portions of N.J.S.A. 2C:13-10, a section of New Jersey's "Human Trafficking Prevention, Protection, and Treatment Act," an enactment signed into law on May 6, 2013, which relates to advertising commercial sexual abuse of a minor, and makes the act of publishing, disseminating or displaying an offending online post directly or indirectly a crime of the first degree; and

WHEREAS, The grant of injunctive relief in the Hoffman decision is based on the determination that relevant portions of N.J.S.A. 2C:13-10 are similar to McKenna and Cooper, likely preempted by federal law; and

WHEREAS, Federal, state and local law enforcement have as a common goal, the prevention of child sex trafficking and other child sexual exploitation, goals which can best be accomplished when the law enforcement entities are able to investigate and prosecute in areas within their jurisdiction, and need not conflict with the declared self-policing goals of the CDA; and

WHEREAS, The National Association of Attorneys General have, by correspondence dated July 23, 2013, requested that Congress amend the CDA to grant jurisdiction to state and local governments

to investigate and prosecute those who promote prostitution and endanger children; now, therefore,

BE IT RESOLVED *by the General Assembly of the State of New Jersey (the Senate concurring):*

1. The Congress of the United States is respectfully requested to amend 47 U.S.C. section 230(e)(1) to the following language: "Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this Act, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal or State criminal statute."

2. Copies of this resolution, as filed with the Secretary of State, shall be transmitted by the Secretary of the Senate or the Clerk of the General Assembly to the President and Vice President of the United States, the Majority and Minority Leaders of the United States Senate, the Speaker and Minority Leader of the United States House of Representatives, and every member of Congress elected from this State.

STATEMENT

This bill respectfully requests that the Congress of the United States amend 47 U.S.C. section 230(e)(1) of the "Communication Decency Act of 1996," 47 U.S.C. section 230 (the "CDA") to the following language: "Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this Act, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal or State criminal statute."

Currently, the CDA, which immunizes internet service providers and users from liability for tortuous acts committed by third parties, effectively thwarts the enforcement of state criminal laws intended to investigate and prosecute those who promote child prostitution and child sexual exploitation.