

117TH CONGRESS
2D SESSION

S. 3758

To direct the Secretary of Health and Human Services to conduct a study to assess the unintended impacts on the health and safety of people engaged in transactional sex, in connection with the enactment of the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 and the loss of interactive computer services that host information related to sexual exchange, to direct the Attorney General to submit a report on human trafficking investigations and prosecutions in connection with the same, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2022

Ms. WARREN (for herself, Mr. WYDEN, Mr. SANDERS, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To direct the Secretary of Health and Human Services to conduct a study to assess the unintended impacts on the health and safety of people engaged in transactional sex, in connection with the enactment of the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 and the loss of interactive computer services that host information related to sexual exchange, to direct the Attorney General to submit a report on human trafficking investigations and prosecutions in connection with the same, and for other purposes.

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 “SESTA/FOSTA Ex-
5 amination of Secondary Effects for Sex Workers Study
6 Act” or the “SAFE SEX Workers Study Act”.

7 **SEC. 2. FINDINGS.**

8 The Congress finds the following:

9 (1) People who engage in consensual, trans-
10 actional sex utilize online platforms to protect their
11 health, safety, and independence. This use includes
12 building community connections, distribution of
13 harm reduction information and techniques, identi-
14 fication and screening of potential clients, sale of
15 media and remote services and negotiating the terms
16 of consensual, transactional sex services, including
17 condom use and other harm reduction strategies.

18 (2) Widespread discrimination against popu-
19 lations, including LGBTQIA+ individuals, particu-
20 larly transgender women of color, prevents many
21 from accessing formal employment resources, tradi-
22 tional financial services, and educational opportuni-
23 ties.

24 (3) In the 2015 United States Transgender
25 Survey conducted by the National Center for

1 Transgender Equality, 19 percent of respondents re-
2 ported having exchanged sex for resources, such as
3 for money, food, or a place to sleep. Transgender
4 women of color, including Black (42 percent), Amer-
5 ican Indian (28 percent), multiracial (27 percent),
6 Latina (23 percent), and Asian (22 percent) re-
7 spondents were more likely to have participated in
8 sex work than the overall sample.

9 (4) In the 2015 United States Transgender
10 Survey, respondents who experienced homelessness
11 in the past year (17 percent) were more than 3
12 times as likely to have participated in sex work dur-
13 ing that year compared to the overall sample.

14 (5) On a broader scale, internet platforms fos-
15 ter connections between people and play an integral
16 part in American society. Access to digital platforms
17 has been essential for activists, distribution of harm
18 reduction information and reproductive and sexual
19 health information, and fostering connections be-
20 tween people who face geographic barriers. Meaning-
21 ful regulation of internet platforms must take into
22 account the role they play in the health, safety, and
23 privacy of all people's lives.

24 (6) While policymakers, representatives of inter-
25 net platforms, and some advocates have discussed

1 ways to mitigate the use of internet platforms to de-
2 crease exploitation, people who consensually trade
3 sex are rarely involved in the drafting of legislation
4 or policies, or in assessing their impact, despite
5 being amongst the populations who are impacted by
6 legislation and policies related to the regulation of
7 these internet platforms.

8 (7) On February 27, 2018, the House of Rep-
9 resentatives passed the Allow States and Victims to
10 Fight Online Sex Trafficking Act of 2017 (com-
11 monly known as “SESTA/FOSTA”). While SESTA/
12 FOSTA holds websites liable for user-generated con-
13 tent that facilitates sex trafficking, it also impacts
14 online platforms where users discuss consensual sex
15 work and related topics.

16 (8) Contemporaneously with the passage of
17 SESTA/FOSTA in the Senate on March 21, 2018,
18 websites preemptively shut down, some directly cit-
19 ing the law’s passage as the rationale for closure.

20 (9) One week before President Donald Trump
21 signed SESTA/FOSTA into law, the Department of
22 Justice seized Backpage.com and arrested Backpage
23 employees, citing promotion of prostitution and
24 money laundering charges, similar to the Depart-

1 ment of Homeland Security’s seizure of Rentboy.com
2 only a few years prior.

3 (10) While these websites and individual ac-
4 counts have been closing down, there has been no
5 national investigation rigorously examining the im-
6 pact of losing access to these platforms on the health
7 and safety of people in consensual, transactional sex
8 work. Regional and anecdotal information from
9 health and safety service providers and sex workers
10 has pointed to significant impacts on the health and
11 safety of people who engage in consensual, trans-
12 actional sex.

13 (11) Community organizations have reported
14 increased homelessness of sex workers, including of
15 sex workers who are caretakers for their families
16 and have lost the economic stability provided by ac-
17 cess to online platforms.

18 (12) Sex workers have reported a reduced abil-
19 ity to screen potential clients for safety, and nego-
20 tiate for boundaries such as condom use, resulting in
21 reports of physical and sexual violence.

22 (13) Many sex workers have turned to street-
23 based work, which has historically involved higher
24 rates of violence than other forms of transactional
25 sex. Street-based sex workers have frequently noted

1 practices which harm their health and safety, such
2 as the confiscation of condoms by police, or use of
3 condoms as evidence of arrest for prostitution.

4 (14) With this new level of precarity, isolation,
5 and vulnerability, there is substantial anecdotal evi-
6 dence that members of the sex work community are
7 more frequently being contacted by third parties
8 seeking to engage in management activities. This in-
9 cludes both sex workers who had always worked
10 independently, as well as those who have previously
11 experienced violence and exploitation by a third
12 party.

13 (15) The Federal Government has long dis-
14 cussed the importance of assessing collateral con-
15 sequences when looking at other industries. Com-
16 prehensive studies are essential to evaluate the im-
17 pact on human trafficking investigations and pros-
18 ecutions, and the health and safety of those involved
19 in consensual, transactional sex, who are increas-
20 ingly losing access to digital platforms, which have
21 been used for harm reduction information and tech-
22 niques, and to screen clients. Informed government
23 policies begin with seeking out relevant information
24 to better guide our actions moving forward.

1 **SEC. 3. STUDY ON UNINTENDED IMPACTS ON HEALTH AND**
2 **SAFETY OF PEOPLE ENGAGED IN TRANS-**
3 **ACTIONAL SEX AS A RESULT OF THE LOSS OF**
4 **CERTAIN ONLINE RESOURCES.**

5 (a) STUDY.—The Secretary of Health and Human
6 Services (referred to in this section as the “Secretary”),
7 in consultation, as appropriate, with the Director of the
8 Centers for Disease Control and Prevention, the Director
9 of the National Institutes of Health, and the Assistant
10 Secretary for Mental Health and Substance Use, shall
11 study the impacts on the health and safety of people en-
12 gaged in transactional sex resulting from the loss of access
13 to interactive computer services (as defined in section
14 230(f) of the Communications Act of 1934 (47 U.S.C.
15 230(f))) in connection with the closure of websites (includ-
16 ing Backpage.com) that host information related to con-
17 sensual sexual exchange, on or after February 27, 2018,
18 in anticipation of, or in response to, the enactment of the
19 Allow States and Victims to Fight Online Sex Trafficking
20 Act of 2017 (Public Law 115–164).

21 (b) INTERVIEWS AND SURVEYS.—The study under
22 subsection (a) shall include interviews with, and surveys
23 conducted by, nonprofit and community-based organiza-
24 tions that provide direct services to people engaged in
25 transactional sex.

1 (c) TOPICS.—The study under subsection (a) shall in-
2 clude assessment of the following impacts on people en-
3 gaged in transactional sex:

4 (1) Changes in access to technology-related
5 harm reduction services, including social media serv-
6 ices.

7 (2) Changes in ability to negotiate terms with
8 potential clients.

9 (3) Changes in experiences of violence from cli-
10 ents.

11 (4) Changes in interactions with law enforce-
12 ment officials, including changes in police surveil-
13 lance, stops, and arrests.

14 (5) Changes in contact from third parties.

15 (6) Changes in relationship to and reliance on
16 third parties.

17 (7) Changes in experiences of exploitation and
18 trafficking.

19 (8) Impacts on access to economic resources.

20 (9) Impacts on access to banking and financial
21 technology tools.

22 (10) Impacts on homelessness and housing sta-
23 bility.

24 (11) Impacts on mental health.

1 (12) Impacts on vulnerability to the trans-
2 mission of HIV and other sexually transmitted infec-
3 tions.

4 (13) Changes in participation in other
5 criminalized behavior.

6 (14) Disparities in the effects described in
7 paragraphs (1) through (13) on key populations
8 typically underserved by service providers, including
9 LGBTQIA+ individuals, people living in rural areas,
10 racial and ethnic minorities, Tribal communities,
11 people experiencing exploitation and trafficking, and
12 undocumented and documented foreign nationals.

13 (15) Any other impacts on people engaged in
14 transactional sex, as determined appropriate by the
15 Secretary.

16 (d) REPORT.—Not later than 1 year after the date
17 of enactment of this Act, the Secretary shall submit to
18 Congress a report on the results of the study under sub-
19 section (a) and make such report available to the public.

20 **SEC. 4. REPORT ON IMPACTS ON HUMAN TRAFFICKING AS**
21 **A RESULT OF THE LOSS OF CERTAIN ONLINE**
22 **RESOURCES.**

23 (a) REPORT.—The Attorney General shall report on
24 the impacts on human trafficking investigations and pros-
25 ecutions resulting from the loss of access to interactive

1 computer services (as defined in section 230(f) of the
2 Communications Act of 1934 (47 U.S.C. 230(f))) in con-
3 nection with the closure of websites (including
4 Backpage.com) that host information related to consen-
5 sual sexual exchange, on or after February 27, 2018, in
6 anticipation of, or in response to, the enactment of the
7 Allow States and Victims to Fight Online Sex Trafficking
8 Act of 2017 (Public Law 115–164).

9 (b) INTERVIEWS AND SURVEYS.—The report under
10 subsection (a) shall include interviews with nonprofit and
11 community-based organizations that provide direct serv-
12 ices to survivors of human trafficking or people engaged
13 in transactional sex.

14 (c) TOPICS.—The report under subsection (a) shall
15 include an assessment of the following impacts of the clo-
16 sure of Backpage.com and other seized websites, the pre-
17 emptive closure of other websites associated with commer-
18 cial and non-commercial sex, the changes to civil liability
19 for websites, and moderation or other operational changes
20 in relation to the changes in liability pursuant to the Allow
21 States and Victims to Fight Online Sex Trafficking Act
22 of 2017 (Public Law 115–164) (or any amendments made
23 by such Act):

24 (1) Impact on access to online communication
25 technologies, including social media services.

1 (2) Impact on investigations into trafficking in
2 persons.

3 (3) Impact on prosecution of individuals under
4 section 1591(a) of title 18, United States Code.

5 (4) Impact on the ability of law enforcement
6 agencies to find and prosecute individuals who vio-
7 late section 1591(a) of title 18, United States Code.

8 (5) Impact of changes made by the Allow
9 States and Victims to Fight Online Sex Trafficking
10 Act of 2017 (Public Law) (commonly known as
11 “SESTA/FOSTA”) to section 230 of the Commu-
12 nications Decency Act on State law enforcement
13 agencies and victims of human trafficking seeking
14 civil redress against websites engaged in trafficking
15 of children in violation of section 1591(a) of title 18,
16 United States Code.

17 (6) Impact on other policies of the Department
18 of Justice with respect to the prosecution of websites
19 under section 1591 or 2421A of title 18, United
20 States Code.

21 (7) Disparities in the impacts described in
22 paragraphs (1) through (6) on key populations typi-
23 cally underserved by service providers, specifically
24 LGBTQIA+ individuals, people living in rural areas,
25 racial and ethnic minorities, Tribal communities,

1 people experiencing exploitation and trafficking, and
2 undocumented and documented foreign nationals.

3 (8) Any other impacts on people engaged in
4 transactional sex, as determined appropriate by the
5 Attorney General.

6 (d) REPORT.—Not later than 1 year after the date
7 of enactment of this Act, the Attorney General shall sub-
8 mit to Congress the report required under subsection (a)
9 and make such report available to the public.

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