

**SENATE CONCURRENT
RESOLUTION No. 49**

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED JANUARY 16, 2018

Sponsored by:
Senator NELLIE POU
District 35 (Bergen and Passaic)

SYNOPSIS

Urges Congress to amend the “Communication Decency Act of 1996.”

CURRENT VERSION OF TEXT

As introduced.



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1 **A CONCURRENT RESOLUTION** urging the Congress to amend the
2 “Communications Decency Act of 1996.”
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4 **WHEREAS**, The “Communication Decency Act of 1996,” 47 U.S.C.
5 section 230 (the “CDA”) provides that no provider or user of an
6 interactive computer service shall be treated as the publisher or
7 speaker of any information provided by another information content
8 provider, effectively immunizing internet service providers and
9 users from liability for tortuous acts committed by third parties; and
10 **WHEREAS**, Section 230 of the CDA goes on to provide that no liability
11 may be imposed under any state or local law that is inconsistent
12 with the intention of the CDA; and
13 **WHEREAS**, The broader original intent of the CDA was to protect
14 children from internet pornography, but is now used as a shield by
15 those who would profit from prostitution and crimes against
16 children; and
17 **WHEREAS**, It is well within the traditional jurisdiction of state and
18 local authorities to investigate and prosecute those who promote
19 prostitution and endanger the welfare of children; and
20 **WHEREAS**, Two recent United States District Court rulings,
21 Backpage.com, LLC v. McKenna, 881 F. Supp. 2d 1262 (W.D.
22 Wash. 2012) and Backpage.com, LLC v. Cooper, 2013 U.S. Dist.
23 LEXIS 55100, 2013 WL 1558785 (M.D. Tenn. Jan. 3, 2013) struck
24 down state statutes in Washington and Tennessee respectively,
25 criminalizing advertizing sexual abuse of a minor; and
26 **WHEREAS**, On August 20, 2013 the United States District Court for
27 the District of New Jersey in the case of Backpage.com, LLC v.
28 Hoffman, 2013 U.S. Dist. LEXIS 119811, WL 4502097 granted a
29 motion to enjoin the enforcement of portions of N.J.S.A. 2C:13-10,
30 a section of New Jersey’s “Human Trafficking Prevention,
31 Protection, and Treatment Act,” an enactment signed into law on
32 May 6, 2013, which relates to advertising commercial sexual abuse
33 of a minor, and makes the act of publishing, disseminating or
34 displaying an offending online post directly or indirectly a crime of
35 the first degree; and
36 **WHEREAS**, The grant of injunctive relief in the Hoffman decision is
37 based on the determination that relevant portions of N.J.S.A.
38 2C:13-10 are similar to McKenna and Cooper, likely preempted by
39 federal law; and
40 **WHEREAS**, Federal, state and local law enforcement have as a
41 common goal, the prevention of child sex trafficking and other
42 child sexual exploitation, goals which can best be accomplished
43 when the law enforcement entities are able to investigate and
44 prosecute in areas within their jurisdiction, and need not conflict
45 with the declared self-policing goals of the CDA; and
46 **WHEREAS**, The National Association of Attorneys General have, by
47 correspondence dated July 23, 2013, requested that Congress
48 amend the CDA to grant jurisdiction to state and local governments

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

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

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

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

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STATEMENT

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

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