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

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Survivors of Human Trafficking Fight Back Act of 2020”.

SEC. 2. VISUAL DEPICTIONS OF SEX ACTS OBTAINED BY COERCION OR DECEPTION.

Section 1591 of title 18, United States Code, is amended—
(1) by striking “subsection (e)(2)” each place it appears and inserting “subsection (g)(2)”;

(2) by redesignating subsection (e) as subsection (g);

(3) by inserting after subsection (d) the following:

“(e)(1)(A) Whoever knowingly distributes, or possesses with the intent to distribute, in or affecting interstate or foreign commerce or using a means of interstate or foreign commerce (including the internet), a visual depiction of a sex act by another person who is not less than 18 years of age, knowing or in reckless disregard of the fact that the participation of that person in the sex act was induced by fraud, force, threats of force, deception, or coercion described in subsection (g)(2), or any combination of such means, shall be punished as provided in paragraph (4).

“(B) Whoever knowingly distributes, or possesses with the intent to distribute, in or affecting interstate or foreign commerce or using a means of interstate or foreign commerce (including the internet), a visual depiction of a sex act by another person or a visual depiction of another person the production of which involved conduct that would violate section 1801(a), knowing or in reckless disregard of the fact that the person did not consent to the
distribution of the visual depiction, shall be punished as
provided in paragraph (4).

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

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

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

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

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

“(II) designate an agent of the person to re-
ceive notice under such a notice process and make
available on the website, web service, or web application operated or provided by the person, in a location accessible to the public, the name, address, phone number, and electronic mail address of the agent.

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

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

“(i) Identification of the visual depiction or depictions claimed to include a sex act, or for which the production is claimed to involved conduct that would violate section 1801(a), that meets the requirements of paragraph (1).

“(ii) Identification of the sex act in the visual depiction, or the portion of the visual depiction the production of which involved conduct that would violate section 1801(a), that meets the requirements of paragraph (1).

“(iii) Information reasonably sufficient to permit the person receiving the notice to contact the person depicted or authorized representative of that
person, such as an address, telephone number, or
 electronic mail address.

“(iv) A brief statement—

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

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

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

“(D) A person operating or providing an internet
 website, web service, or web application shall not be liable
 to any other person for any claim based on the operator
 or provider’s good faith disabling of access to, or removal
 of, material the operator or provider believes includes a
 sex act, or believes the production of which involved con-
 duct that would violate section 1801(a), meeting the re-
 quirements of paragraph (1).
“(6) It shall not be a defense to an alleged violation of paragraph (1) that a person did not receive notice under the notice process described in paragraph (5)(B).

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

“(A) sexually explicit conduct, as defined in section 2256(2)(A);

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

“(C) the lascivious exhibition of the post-pubescent female nipple or gametes on the body.

“(f)(1) An individual who is aggrieved of a violation of subsection (e)(1) may bring a civil action in an appropriate district court of the United States seeking appropriate relief.

“(2) Whoever violates the civil law of a State, territory, or Indian Tribe by coercing an individual into participating in a sex act shall be liable under Federal law for such a violation and subject to the same civil remedies that would be available under State, territorial, or Tribal law to the party injured if—

“(A) the sex act is a commercial sex act that occurred in or affecting interstate or foreign commerce; or
“(B) a visual depiction of the sex act is distributed by the defendant in or affecting interstate or foreign commerce or using a means of interstate or foreign commerce (including the internet), knowing or in reckless disregard of the fact that the individual was coerced into participating in the sex act depicted.

“(3) In this subsection—

“(A) the terms ‘coercing an individual into participating in a sex act’ and ‘coerced into participating in a sex act’, with respect to an individual, means the individual was induced by force, threats of force, fraud, deception, or coercion (as those terms are defined under the law of the applicable State, territory, or Tribe) to participate in a sex act; and

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

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

(A) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively; and

(B) by inserting after paragraph (3) the following:
“(4) The term ‘deception’ means intentionally misleading a participant in a sex act about whether a visual depiction of the sex act will be created or about whether or how broadly a visual depiction will be distributed.”.

SEC. 3. SEVERABILITY.

If any provision of this Act or any amendment made by this Act, or any application of such provision or amendment to any person or circumstance, is held to be unconstitutional or otherwise unlawful, the remainder of the provisions of this Act and the amendments made by this Act, and the application of the provision or amendment to any other person or circumstance, shall not be affected.