**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4542**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Guffey, Trantham, Magnuson, Pope and Felder

Document Path: LC-0381SA24.docx

Introduced in the House on January 9, 2024

Currently residing in the House

Summary: Online technological exploitation

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 11/16/2023 House Prefiled

 11/16/2023 House Referred to Committee on **Judiciary**

 12/20/2023 Scrivener's error corrected

 1/9/2024 House Introduced and read first time (House Journal‑page 77)

 1/9/2024 House Referred to Committee on **Judiciary** (House Journal‑page 77)

 1/10/2024 House Member(s) request name added as sponsor: Felder

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=4542&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[11/16/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4542_20231116.docx)

[12/20/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4542_20231220.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING ARTICLE 9 TO CHAPTER 5, TITLE 39 SO AS TO PROVIDE DEFINITIONS, TO PROVIDE THAT A COVERED PLATFORM OPERATOR MAY NOT UPLOAD OR ALLOW A USER TO UPLOAD CERTAIN PORNOGRAPHIC IMAGES WITHOUT CERTAIN VERIFICATION, TO PROVIDE THAT A COVERED PLATFORM OPERATOR MUST ESTABLISH CERTAIN PROCEDURES, TO PROVIDE THAT CERTAIN IMAGES MAY NOT BE UPLOADED WITHOUT CONSENT, TO PROVIDE FOR CIVIL PENALTIES, TO PROVIDE FOR CRIMINAL PENALTIES, TO ESTABLISH A LEGISLATIVE COMMITTEE, AND TO PROVIDE THAT THE ATTORNEY GENERAL SHALL CREATE CERTAIN CONSENT FORMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 5, Title 39 of the S.C. Code is amended by adding:

 Article 9

 Online Technological Exploitation

 Section 39‑5‑910. As used in this article:

 (1) “Coerced consent” means the purported consent obtained from a person:

 (a) through fraud, duress, misrepresentation, undue influence, or nondisclosure;

 (b) who lacks capacity; or

 (c) through exploiting or leveraging the person’s immigration status, pregnancy, disability, addiction, juvenile status, or economic circumstances.

 (2) “Computer” means an electronic, magnetic, optical, electrochemical, or other high‑speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but does not include an automated typewriter or typesetter, a portable hand‑held calculator, or other similar device.

 (3) “Consent” means an agreement that is informed and thorough and does not include coerced consent.

 (4) “Covered platform” means an interactive computer service that hosts or makes available to the general public pornographic images. For purposes of this item, the availability of pornographic images to a group of subscribers is considered available to the general public if any member of the general public, subject to reasonable limitations, can obtain a subscription.

 (5) “Covered platform operator” means a provider of a covered platform.

 (6) “Information content provider” means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

 (7) “Interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet and systems operated or services offered by libraries or educational institutions.

 (8) “Intimate visual depiction” means any visual depiction:

 (a) of an individual who is reasonably identifiable from the visual depiction itself or information displayed in connection with the visual depiction, including through facial recognition, an identifying marking on the individual, including a birthmark or piercing, an identifying feature of the background of the visual depiction, voice matching, or written confirmation from an individual who is responsible, in whole or in part, for the creation or development of the visual depiction; and

 (b) in which the individual depicted is engaging in sexually explicit conduct or the naked genitals, anus, pubic area, or post‑pubescent female nipple of the individual depicted are visible.

 (9) “Pornographic image” means any visual depiction of actual or feigned sexually explicit conduct or any intimate visual depiction.

 (10) “Sexually explicit conduct” means actual or simulated:

 (a) sexual intercourse, including genital‑genital, oral‑genital, anal‑genital, or oral‑anal, whether between persons of the same or opposite sex;

 (b) bestiality;

 (c) masturbation;

 (d) sadistic or masochistic abuse; or

 (e) lascivious exhibition of the anus, genitals, or pubic area of any person.

 (11) “User” means an individual who is an information content provider or, with respect to a covered platform, an individual who is an information content provider who is responsible, in whole or in part, for the creation or development of pornographic images hosted or made available by the covered platform.

 (12) “Visual depiction” means a photograph, film, video, or modified photograph, film, or video whether made or produced by electronic, mechanical, or other means.

 Section 39‑5‑920. (A)(1) A covered platform operator may not upload or allow a user to upload a pornographic image to the covered platform unless the operator has verified, in accordance with item (2):

 (a) the identity of the user; and

 (b) that the user is not less than eighteen years old.

 (2) In carrying out item (1), a covered platform operator shall verify the identity and age of a user by:

 (a) requiring use of an adult access code or adult personal identification number;

 (b) accepting a digital certificate that verifies age; or

 (c) using any other reasonable measure of age verification that the Attorney General has determined to be feasible with available technology.

 (3) A covered platform operator that only requires a user to confirm that the user is not less than eighteen years of age, without independent means of verification, may not satisfy the age requirement pursuant to item (1).

 (B)(1) A covered platform operator may not upload or allow a user to upload a pornographic image to the covered platform unless the operator has verified, in accordance with subsection (A)(2), that each individual appearing in the pornographic image:

 (a) was not less than eighteen years of age when the pornographic image was created;

 (b) has provided explicit written evidence of consent for each sex act in which the individual engaged during the creation of the pornographic image; and

 (c) has provided explicit written consent for the distribution of the specific pornographic image.

 (2)(a) Consent described in item (1)(b) does not imply or constitute evidence of consent described in item (1)(c).

 (b) Consent described in item (1)(c) does not imply or constitute evidence of consent described in item (1)(b).

 (3) In carrying out item (1), a covered platform operator shall obtain, either from the user seeking to upload the pornographic image or through other means:

 (a) a consent form created or approved by the Attorney General pursuant to item (4) from each individual appearing in the pornographic image that includes:

 (i) the name, date of birth, and signature of the individual;

 (ii) a statement that the individual is not less than eighteen years of age, unless no reasonable person could conclude that the individual is less than thirty years of age;

 (iii) a statement that the consent is for distribution of the specific pornographic image;

 (iv) the geographic area and medium, meaning online, print, or other distribution method, for which the individual provides consent to distribution of the pornographic image;

 (v) the duration of time for which the individual provides consent to distribution of the pornographic image;

 (vi) a list of the specific sex acts that the person agrees to engage in for the pornographic image; and

 (vii) a statement that explains coerced consent and that the individual has the right to withdraw the individual’s consent at any time; and

 (b) not less than one form of valid identification for each individual appearing in the pornographic image:

 (i) that was issued by an agency of the United States or of a state, local, or foreign government and contains the name, date of birth, signature, and photograph of the individual; and

 (ii) on which the name, date of birth, and signature of the individual match the name, date of birth, and signature of the individual on the consent form required pursuant to subitem (a).

 (4)(a)(i) The Attorney General shall create and make available to the public a consent form for purposes of item (3)(a).

 (ii) A covered platform operator shall make the consent form created pursuant to subsubitem (i) available to users in both written and electronic format.

 (b) For purposes of item (3)(a), a user may submit to a covered platform an alternative consent form created by a user or covered platform operator if the alternative consent form has been approved by the Attorney General.

 (c) Nothing in this section may be construed to affect any obligation of a covered platform pursuant to any other general or special law or impact or otherwise limit the criminal liability of a user or other individual pursuant to any other law.

 Section 39‑5‑930. (A) As used in this section:

 (1) “Authorized representative” means a person authorized in writing by the individual to act on behalf of the individual with regard to the matter in question or, in the case of an individual under the age of eighteen, a parent or legal guardian of the individual.

 (2) “Eligible person” means, with respect to a pornographic image uploaded to a covered platform:

 (a) an individual who appears in the pornographic image and has not provided consent to, or has withdrawn consent in compliance with this article, the distribution of the pornographic image;

 (b) an authorized representative of an individual described in subitem (a); or

 (c) a law enforcement officer acting pursuant to a valid court order.

 (B) A covered platform operator shall establish a procedure for removing a pornographic image from the covered platform at the request of a person and designate one or more employees of the operator to be responsible for handling requests for removal of pornographic images.

 (C) A covered platform operator shall display a prominently visible notice on the website or mobile application of the covered platform that provides instructions on how a person can request the removal of a pornographic image.

 (D)(1) If a covered platform operator receives a request from an eligible person, through any request mechanism offered by the operator pursuant to subsection (B), to remove a pornographic image that is being hosted by the covered platform without the consent of an individual who appears in the pornographic image, the operator shall remove the pornographic image as quickly as possible but not later than seventy‑two hours after receiving the request.

 (2) If a covered platform operator receives a request from a person other than an eligible person, through any request mechanism offered by the operator pursuant to subsection (B), to remove a pornographic image that is being hosted by the covered platform without the consent of an individual who appears in the pornographic image, not later than seventy‑two hours after receiving the request the operator shall review the records of the operator with respect to the pornographic image to determine whether the pornographic image was uploaded to the platform in accordance with the verification requirements pursuant to Section 39‑5‑920. If the operator determines that the pornographic image was not uploaded to the platform in accordance with the verification requirements pursuant to Section 39‑5‑920, the operator shall remove the pornographic image.

 (E) In the case of a pornographic image that has been removed from a covered platform in accordance with this section, the covered platform operator shall block the pornographic image, and any altered or edited version of the pornographic image, from being uploaded to the covered platform again.

 Section 39‑5‑940. (A) A user of a covered platform may not upload a pornographic image of an individual to the covered platform without the consent of the individual.

 (B) For purposes of subsection (A), whether an individual has provided consent to the uploading of an image must be determined in accordance with this article and any other applicable law.

 Section 39‑5‑950. (A)(1) The Attorney General may impose a civil penalty on any covered platform operator that violates Section 39‑5‑920(A) in an amount of not more than ten thousand dollars for each day during which a pornographic image remains on the covered platform in violation of Section 39‑5‑920(A), beginning twenty‑four hours after the Attorney General provides notice of the violation to the operator. A civil penalty pursuant to this subsection accrues on a per‑day and per‑image basis.

 (2) If a covered platform operator violates Section 39‑5‑920(B) with respect to a pornographic image, any person aggrieved by the violation may bring a civil action against the covered platform operator for damages in an amount equal to the greater of:

 (a) ten thousand dollars for each day during which a pornographic image remains on the covered platform in violation of Section 39‑5‑920(B), calculated on a per‑day and per‑image basis; or

 (b) actual damages.

 (B)(1) The Attorney General may impose a civil penalty on any covered platform operator that violates Section 39‑5‑930(B) in an amount of not more than ten thousand dollars for each day during which the covered platform remains in violation of Section 39‑5‑930(B), beginning twenty‑four hours after the Attorney General provides notice of the violation to the operator.

 (2) The Attorney General may impose a civil penalty on any covered platform operator that violates Section 39‑5‑930(C) in an amount of not more than five thousand dollars for each day during which the covered platform remains in violation of Section 39‑5‑930(C), beginning twenty‑four hours after the Attorney General provides notice of the violation to the operator.

 (3)(a) If a covered platform operator violates Section 39‑5‑930(D) with respect to a pornographic image, any person aggrieved by the violation may bring a civil action against the covered platform operator for damages in an amount equal to the greater of:

 (i) ten thousand dollars for each day during which the pornographic image remains on the covered platform in violation of Section 39‑5‑930 (D), calculated on a per‑day and per‑image basis; or

 (ii) actual damages.

 (b) A covered platform operator is not liable pursuant to item (3)(a) for a violation of Section 39‑5‑930(D) if, in allowing the upload of a pornographic image to the covered platform, the operator reasonably relied on verification materials, in accordance with Section 39‑5‑920(B)(3), that were later found to be fraudulent, provided that the operator removes the pornographic image not later than twenty‑four hours after discovering that the verification materials are fraudulent. If a covered platform operator fails to remove a pornographic image within twenty‑four hours of discovering that the verification materials are fraudulent, damages pursuant to item (3)(a)(i) must be calculated with respect to each day after the date on which that twenty‑four‑hour period expires.

 (4) If a covered platform operator violates Section 39‑5‑930(E) with respect to a pornographic image, any person aggrieved by the violation may bring a civil action against the covered platform operator for damages in an amount equal to the greater of:

 (a) ten thousand dollars for each day during which the pornographic image remains on the covered platform in violation of Section 39‑5‑930(E); or

 (b) actual damages.

 (C) If a user of a covered platform violates Section 39‑5‑940 with respect to a pornographic image, any person aggrieved by the violation may bring a civil action against the user for damages in an amount equal to the greater of:

 (1) ten thousand dollars for each day during which the pornographic image remains on the covered platform in violation of Section 39‑5‑940, calculated on a per‑day and per‑image basis; or

 (2) actual damages.

 Section 39‑5‑960. (A) Except as provided in subsection (C), it is unlawful for any information content provider to knowingly use any interactive computer service to publish an intimate visual depiction of an individual with knowledge of or reckless disregard for:

 (1) the lack of consent of the individual to the publication; and

 (2) the reasonable expectation of the individual that the depiction would not be published through an interactive computer service without the individual’s consent.

 (B) Any person who violates subsection (A) must be punished by a fine of not more than ten thousand dollars or by imprisonment in a state prison for not more than five years, or both.

 (C) Subsection (A) may not:

 (1) prohibit any lawful law enforcement, correctional, or intelligence activity;

 (2) apply to an individual acting in good faith to report unlawful activity or in pursuance of a legal or other lawful obligation; or

 (3) apply to a document production or filing associated with a legal proceeding.

 Section 39‑5‑970. (A) There is established a legislative committee to examine the sentencing for criminal online technological exploitation. The committee shall recommend sentencing guidelines for such crimes, guidance to help consumers prevent and report criminal online technological exploitation, and further action, including legislative action, to protect survivors from criminal online technological exploitation.

 (B)(1) The committee consists of:

 (a) the Chairman of the House Judiciary committee;

 (b) the Chairman of the Senate Judiciary committee;

 (c) one member appointed by the Speaker of the House of Representatives;

 (d) one member appointed by the President of the Senate;

 (e) one member appointed by the Minority Leader of the House of Representatives;

 (f) one member appointed by the Minority Leader of the Senate;

 (g) two members appointed by the Governor; and

 (h) two members appointed by the Attorney General.

 (2) The Chairman of the House Judiciary committee and the Chairman of the Senate Judiciary committee shall serve as co‑chairs.

 (C) No later than December 31, 2025, the committee shall file a report of its findings and recommendations, including any draft legislation, with the clerks of the House of Representatives and the Senate.

 Section 39‑5‑980. The Attorney General shall create the consent form required pursuant to Section 39‑5‑920.

SECTION 2. This act takes effect ninety days after approval by the Governor.

‑‑‑‑XX‑‑‑‑