**A** **BILL**

TO AMEND SECTION 16‑15‑375, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS APPLICABLE TO CERTAIN CHILD EXPLOITATION OFFENSES, SO AS TO DEFINE THE TERM “SEXUALLY EXPLICIT CONDUCT”; TO AMEND SECTION 16‑15‑395, AS AMENDED, RELATING TO FIRST DEGREE SEXUAL EXPLOITATION OF A MINOR, SO AS TO INCREASE THE PENALTY FOR THE OFFENSE AND REFERENCE THE NEW TERM; TO AMEND SECTION 16‑15‑405, AS AMENDED, RELATING TO SECOND DEGREE SEXUAL EXPLOITATION OF A MINOR, SO AS TO INCLUDE DISTRIBUTING MATERIAL CONTAINING A MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT IN THE PURVIEW OF THE OFFENSE AND TO REFERENCE THE NEW TERM; AND TO AMEND SECTION 16‑15‑410, AS AMENDED, RELATING TO THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR, SO AS TO REFERENCE THE NEW TERM.

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

SECTION 1. Section 16‑15‑375 of the 1976 Code is amended by adding an appropriately numbered subsection at the end to read:

“( ) ‘Sexually explicit conduct’ means actual or simulated sexual activity or lascivious exhibition of the genitals or pubic area of a person.”

SECTION 2. Section 16‑15‑395 of the 1976 Code, as last amended by Act 208 of 2004, is further amended to read:

“Section 16‑15‑395. (A) ~~An individual~~A person commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:

(1) uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in ~~sexual activity~~sexually explicit conduct for a live performance or for the purpose of producing material that contains a visual representation depicting this ~~activity~~conduct;

(2) permits a minor under his custody or control to engage in ~~sexual activity~~sexually explicit conduct for a live performance or for the purpose of producing material that contains a visual representation depicting this ~~activity~~conduct;

(3) transports or finances the transportation of a minor through or across this State with the intent that the minor engage in ~~sexual activity~~sexually explicit conduct for a live performance or for the purpose of producing material that contains a visual representation depicting this ~~activity~~conduct; or

(4) records, photographs, films, develops, duplicates, produces, or creates a digital electronic file for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in ~~sexual activity~~sexually explicit conduct.

(B) In a prosecution ~~under~~pursuant to this section, the trier of fact may infer that a participant in a ~~sexual activity~~sexually explicit conduct depicted in material as a minor through its title, text, visual representations, or otherwise, is a minor.

(C) Mistake of age is not a defense to a prosecution ~~under~~pursuant to this section.

(D) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned for not less than three years nor more than ~~twenty~~thirty years. No part of the minimum sentence of imprisonment may be suspended nor is the individual convicted eligible for parole until he has served the minimum term of imprisonment. Sentences imposed pursuant to this section must run consecutively with and commence at the expiration of another sentence being served by the person sentenced.”

SECTION 3. Section 16‑15‑405 of the 1976 Code, as last amended by Act 208 of 2004, is further amended to read:

“Section 16‑15‑405. (A) ~~An individual~~A person commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he:

(1) records, photographs, films, develops, duplicates, produces, or creates digital electronic file material that contains a visual representation of a minor engaged in ~~sexual activity~~sexually explicit conduct; or

(2) distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in ~~sexual activity~~sexually explicit conduct.

(B) In a prosecution ~~under~~pursuant to this section, the trier of fact may infer that a participant in ~~sexual activity~~sexually explicit conduct depicted in material as a minor through its title, text, visual representations, or otherwise, is a minor.

(C) Mistake of age is not a defense to a prosecution ~~under~~pursuant to this section.

(D) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not less than two years nor more than ten years. No part of the minimum sentence may be suspended nor is the ~~individual~~person convicted eligible for parole until he has served the minimum sentence.

(E) Notwithstanding the provisions of subsection (D), a person who distributes, transports, exhibits, sells, or exchanges material that contains a visual representation of a minor engaged in sexually explicit conduct to or with a person who he reasonably believes to be under the age of eighteen, upon conviction, must be imprisoned not less than four years nor more than fifteen years. No part of the minimum sentence may be suspended nor is the person eligible for parole until he has served the minimum sentence. ”

SECTION 4. Section 16‑15‑410 of the 1976 Code, as last amended by Act 226 of 2008, is further amended to read:

“Section 16‑15‑410. (A) ~~An individual~~A person commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaging in ~~sexual activity~~sexually explicit conduct.

(B) In a prosecution pursuant to this section, the trier of fact may infer that a participant in ~~sexual activity~~sexually explicit conduct depicted as a minor through its title, text, visual representation, or otherwise is a minor.

(C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than ten years.

(D) This section does not apply to an employee of a law enforcement agency, including the State Law Enforcement Division, a prosecuting agency, including the South Carolina Attorney General’s Office, or the South Carolina Department of Corrections who, while acting within the employee’s official capacity in the course of an investigation or criminal proceeding, is in possession of material that contains a visual representation of a minor engaging in ~~sexual activity~~sexually explicit conduct.”

SECTION 5. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 6. This act takes effect upon approval by the Governor.

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