**South Carolina General Assembly**

120th Session, 2013-2014

**A269, R298, H3959**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Kennedy, Quinn, Spires, Huggins, Atwater, Bingham, Delleney, Felder, Finlay, D.C. Moss, Norman, Pope, Sellers, Simrill, Tallon, Weeks, Wood and Whipper

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Introduced in the House on April 16, 2013

Introduced in the Senate on April 9, 2014

Last Amended on May 29, 2014

Passed by the General Assembly on June 5, 2014

Governor's Action: June 9, 2014, Signed

Summary: Sexual exploitation of a minor

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/16/2013 House Introduced and read first time ([House Journal‑page 31](file:///H:\HJ%20Archive\2013\04-16-13.docx))

4/16/2013 House Referred to Committee on **Judiciary** ([House Journal‑page 31](file:///H:\HJ%20Archive\2013\04-16-13.docx))

3/27/2014 House Committee report: Favorable with amendment **Judiciary** ([House Journal‑page 29](file:///H:\HJ%20Archive\2014\03-27-14.docx))

3/28/2014 Scrivener's error corrected

4/1/2014 House Member(s) request name added as sponsor: Whipper

4/2/2014 House Debate adjourned until Thur., 4‑3‑14 ([House Journal‑page 204](file:///H:\HJ%20Archive\2014\04-02-14.docx))

4/3/2014 House Debate adjourned until Tues., 4‑8‑14 ([House Journal‑page 24](file:///H:\HJ%20Archive\2014\04-03-14.docx))

4/8/2014 House Amended ([House Journal‑page 13](file:///H:\HJ%20Archive\2014\04-08-14.docx))

4/8/2014 House Read second time ([House Journal‑page 13](file:///H:\HJ%20Archive\2014\04-08-14.docx))

4/8/2014 House Roll call Yeas‑96 Nays‑0 ([House Journal‑page 16](file:///H:\HJ%20Archive\2014\04-08-14.docx))

4/9/2014 House Read third time and sent to Senate

4/9/2014 Senate Introduced and read first time ([Senate Journal‑page 15](file:///H:\SJ%20Archive\2014\04-09-14.docx))

4/9/2014 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 15](file:///H:\SJ%20Archive\2014\04-09-14.docx))

5/21/2014 Senate Committee report: Favorable **Judiciary** ([Senate Journal‑page 15](file:///H:\SJ%20Archive\2014\05-21-14.docx))

5/29/2014 Senate Amended ([Senate Journal‑page 57](file:///H:\SJ%20Archive\2014\05-29-14.docx))

5/29/2014 Senate Read second time ([Senate Journal‑page 57](file:///H:\SJ%20Archive\2014\05-29-14.docx))

5/29/2014 Senate Roll call Ayes‑42 Nays‑0 ([Senate Journal‑page 57](file:///H:\SJ%20Archive\2014\05-29-14.docx))

6/5/2014 House Concurred in Senate amendment and enrolled ([House Journal‑page 80](file:///H:\HJ%20Archive\2014\06-05-14.docx))

6/5/2014 House Roll call Yeas‑81 Nays‑0

6/5/2014 Senate Read third time and returned to House with amendments ([Senate Journal‑page 17](file:///H:\SJ%20Archive\2014\06-05-14.docx))

6/5/2014 Ratified R 298

6/9/2014 Signed By Governor

6/13/2014 Effective date 06/09/14

6/26/2014 Act No. 269

**VERSIONS OF THIS BILL**

[4/16/2013](file:///p:\pprever\2013-14\3959_20130416.docx)

[3/27/2014](file:///p:\pprever\2013-14\3959_20140327.docx)

[3/28/2014](file:///p:\pprever\2013-14\3959_20140328.docx)

[4/8/2014](file:///p:\pprever\2013-14\3959_20140408.docx)

[5/21/2014](file:///p:\pprever\2013-14\3959_20140521.docx)

[5/29/2014](file:///p:\pprever\2013-14\3959_20140529.docx)

(A269, R298, H3959)

**AN ACT TO AMEND SECTION 16‑15‑395, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FIRST DEGREE SEXUAL EXPLOITATION OF A MINOR, SO AS TO INCLUDE THE APPEARANCE OF A MINOR IN A STATE OF SEXUALLY EXPLICIT NUDITY WHEN A REASONABLE PERSON WOULD INFER THE PURPOSE IS SEXUAL STIMULATION IN THE PURVIEW OF THE OFFENSE; TO AMEND SECTION 16‑15‑405, AS AMENDED, RELATING TO SECOND DEGREE SEXUAL EXPLOITATION OF A MINOR, SO AS TO INCLUDE THE APPEARANCE OF A MINOR IN A STATE OF SEXUALLY EXPLICIT NUDITY WHEN A REASONABLE PERSON WOULD INFER THE PURPOSE IS SEXUAL STIMULATION IN THE PURVIEW OF THE OFFENSE; AND TO AMEND SECTION 16‑15‑410, AS AMENDED, RELATING TO THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR, SO AS TO INCLUDE THE APPEARANCE OF A MINOR IN A STATE OF SEXUALLY EXPLICIT NUDITY WHEN A REASONABLE PERSON WOULD INFER THE PURPOSE IS SEXUAL STIMULATION IN THE PURVIEW OF THE OFFENSE.**

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

**Sexual exploitation of a minor, first degree**

SECTION 1. 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 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 or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation;

(2) permits a minor under his custody or control to engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation;

(3) transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation; 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 or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.

(B) In a prosecution pursuant to this section, the trier of fact may infer that a participant in a sexual activity or a state of sexually explicit nudity 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 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 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.”

**Sexual exploitation of a minor, second degree**

SECTION 2. 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 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 or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation; or

(2) distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.

(B) In a prosecution pursuant to this section, the trier of fact may infer that a participant in sexual activity or a state of sexually explicit nudity 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 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 convicted eligible for parole until he has served the minimum sentence.”

**Sexual exploitation of a minor, third degree**

SECTION 3. 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 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 or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.

(B) In a prosecution pursuant to this section, the trier of fact may infer that a participant in sexual activity or a state of sexually explicit nudity 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 or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.”

**Savings clause**

SECTION 4. 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.

**Time effective**

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 5th day of June, 2014.

Approved the 9th day of June, 2014.

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