AMENDED

May 31, 2016

**H. 5172**

Introduced by Reps. Fry, Henegan, Erickson, Long, Funderburk, Bernstein, Allison, Nanney, Robinson‑Simpson, Norrell, Tinkler, H.A. Crawford, Cobb‑Hunter, Ott, M.S. McLeod, Thayer, Whitmire, Johnson, Felder, Hardee, Goldfinch, Lowe, Jordan, Sandifer, Yow, Hill, Finlay, Gagnon, Jefferson, Williams, Knight, Govan, Rivers, Herbkersman, Bales, Ridgeway, Henderson, Duckworth, Dillard, Huggins, Atwater, Hicks, Gilliard, G.A. Brown, Whipper and Clemmons

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Read the first time April 28, 2016.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑3‑2110 SO AS TO ENACT THE “SAFE HARBOR FOR EXPLOITED MINORS ACT”, TO PROVIDE FOR PROTECTION OF THE IDENTITY OF MINOR VICTIMS OF TRAFFICKING IN PERSONS AND PROVIDE CERTAIN PROTECTIONS TO MINORS CHARGED WITH CERTAIN CRIMES INVOLVING PROSTITUTION AND COERCED INVOLVEMENT IN SUCH CRIMES, AMONG OTHER THINGS.

Amend Title To Conform

Whereas, the General Assembly finds that:

(1) minors under the age of eighteen residing in or visiting this State engaging in commercial sexual acts or sex trafficking may be victims of a crime and, if victims, enjoy the protection and resources of the State of South Carolina; and

(2) minors who qualify for the protection of this act should be protected from criminal and civil liability including immunity from prosecution. Now, therefore,

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

SECTION 1. This act may be cited as the “Safe Harbor for Exploited Minors Act”.

SECTION 2. Article 19, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑2110. (A) In a prosecution involving a minor victim of trafficking in persons, an officer or employee of the court may not disclose the identity of the victim of trafficking in persons to the public. All records revealing the name or other identifying information of the victim of trafficking in persons must be redacted to comply with this section prior to public inspection or disclosure pursuant to Chapter 4, Title 30, the Freedom of Information Act.

(B) A minor under the age of eighteen who is charged with a violation pursuant to Section 16‑15‑90, is entitled to a hearing to determine whether the minor is immune from prosecution. If the judge determines, by a preponderance of the evidence, that the minor violated Section 16‑15‑90 as the result of coercion and duress from a third person, the minor is immune from criminal prosecution for those offenses. The degree of coercion must be of such a nature as to induce a well‑grounded apprehension of death or serious bodily harm if the act is not done. The fear of death or harm must be reasonable.

(C) A minor under the age of eighteen who is charged with violating a trespassing, loitering, obstruction of highway, disorderly conduct, or simple possession of a controlled substance statute as a direct result of being a victim of sex trafficking, when the violation is his or her first offense, is eligible to apply for a pre‑trial diversion program. If the minor is accepted and successfully completes the diversionary program, the charges must be expunged pursuant to other provisions of law.

(D) A law enforcement agency may use standard procedures for investigating prostitution involving minors under the age of eighteen, but must timely contact the Department of Social Services when a minor under the age of eighteen is being prostituted or trafficked, or is charged with prostitution or related offenses.

(E) The provisions of this section do not extend to a minor under the age of eighteen who induces, encourages, facilitates, or enables in anyway the sexual exploitation of another person.

(F) Residence of a victim of trafficking in persons in a shelter or other facility is voluntary, and a victim of trafficking in persons may decline to stay in a shelter or other facility.

(G) Admission to a shelter:

(1) must be made without regard to race, religion, ethnic background, sexual orientation, country of origin, or culture; and

(2) may not be conditioned on whether the victim of trafficking in persons is cooperating with a law enforcement agency in its attempts to prosecute persons pursuant to this article.”

SECTION 3. This act takes effect upon approval by the Governor.

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