**South Carolina General Assembly**

122nd Session, 2017-2018

**A238, R238, H3329**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Fry, Clemmons, Crawford, Duckworth, Atwater, Cobb‑Hunter, Elliott, B. Newton, Daning, Henegan, Toole, King and Yow

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Introduced in the House on January 10, 2017

Introduced in the Senate on February 27, 2018

Last Amended on April 26, 2018

Passed by the General Assembly on May 10, 2018

Governor's Action: May 17, 2018, Signed

Summary: Human trafficking

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/15/2016 House Prefiled

12/15/2016 House Referred to Committee on **Judiciary**

1/10/2017 House Introduced and read first time ([House Journal‑page 163](file:///h:\hj\20170110.docx))

1/10/2017 House Referred to Committee on **Judiciary** ([House Journal‑page 163](file:///h:\hj\20170110.docx))

1/11/2017 House Member(s) request name added as sponsor: Daning ([House Journal‑page 43](file:///h:\hj\20170111.docx))

2/21/2017 House Member(s) request name added as sponsor: Henegan

2/21/2018 House Committee report: Favorable with amendment **Judiciary** ([House Journal‑page 4](file:///h:\hj\20180221.docx))

2/22/2018 House Member(s) request name added as sponsor: Toole, King, Yow

2/22/2018 House Amended ([House Journal‑page 29](file:///h:\hj\20180222.docx))

2/22/2018 House Read second time ([House Journal‑page 29](file:///h:\hj\20180222.docx))

2/22/2018 House Roll call Yeas‑103 Nays‑0 ([House Journal‑page 34](file:///h:\hj\20180222.docx))

2/22/2018 House Unanimous consent for third reading on next legislative day ([House Journal‑page 36](file:///h:\hj\20180222.docx))

2/23/2018 House Read third time and sent to Senate ([House Journal‑page 3](file:///h:\hj\20180223.docx))

2/27/2018 Senate Introduced and read first time ([Senate Journal‑page 6](file:///h:\sj\20180227.docx))

2/27/2018 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 6](file:///h:\sj\20180227.docx))

3/16/2018 Senate Referred to Subcommittee: Hutto (ch), Malloy, Shealy, Rice, Timmons

4/25/2018 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 10](file:///h:\sj\20180425.docx))

4/26/2018 Scrivener's error corrected

4/26/2018 Senate Committee Amendment Adopted ([Senate Journal‑page 42](file:///h:\sj\20180426.docx))

4/27/2018 Scrivener's error corrected

5/8/2018 Senate Read second time ([Senate Journal‑page 63](file:///h:\sj\20180508.docx))

5/9/2018 Senate Read third time and returned to House with amendments ([Senate Journal‑page 36](file:///h:\sj\20180509.docx))

5/9/2018 Senate Roll call Ayes‑44 Nays‑0

5/9/2018 House Concurred in Senate amendment and enrolled ([House Journal‑page 11](file:///h:\hj\20180509.docx))

5/9/2018 House Roll call Yeas‑113 Nays‑0 ([House Journal‑page 11](file:///h:\hj\20180509.docx))

5/9/2018 House Reconsidered ([House Journal‑page 13](file:///h:\hj\20180509.docx))

5/9/2018 House Debate adjourned until Thur., 5‑10‑18 ([House Journal‑page 13](file:///h:\hj\20180509.docx))

5/10/2018 House Concurred in Senate amendment and enrolled ([House Journal‑page 45](file:///h:\hj\20180510.docx))

5/10/2018 House Roll call Yeas‑96 Nays‑0 ([House Journal‑page 46](file:///h:\hj\20180510.docx))

5/14/2018 Ratified R 238

5/17/2018 Signed By Governor

5/30/2018 Effective date 05/17/18

5/31/2018 Act No. 238

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**VERSIONS OF THIS BILL**

[12/15/2016](file:///p:\pprever\2017-18\3329_20161215.docx)

[2/21/2018](file:///p:\pprever\2017-18\3329_20180221.docx)

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[4/26/2018-A](file:///p:\pprever\2017-18\3329_20180426A.docx)

[4/27/2018](file:///p:\pprever\2017-18\3329_20180427.docx)

(A238, R238, H3329)

**AN ACT TO AMEND SECTION 16‑3‑2010, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR THE ARTICLE ON TRAFFICKING IN PERSONS, SO AS TO DELETE THE DEFINITION OF “TRAFFICKING IN PERSONS”; AND TO AMEND SECTION 16‑3‑2020, RELATING TO THE OFFENSE OF TRAFFICKING IN PERSONS, PENALTIES, AND DEFENSES, SO AS TO RESTRUCTURE THE OFFENSE AND PROVIDE A PENALTY WHEN THE VICTIM IS A MINOR UNDER THE AGE OF EIGHTEEN AND TO FURTHER ENSURE THE PROTECTION OF MINOR VICTIMS, AMONG OTHER THINGS.**

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

**Trafficking in persons, definitions**

SECTION 1. Section 16‑3‑2010 of the 1976 Code is amended to read:

“Section 16‑3‑2010. As used in this article:

(1) ‘Business’ means a corporation, partnership, proprietorship, firm, enterprise, franchise, organization, or self‑employed individual.

(2) ‘Charitable organization’ means a charitable organization pursuant to Section 33‑56‑20.

(3) ‘Debt bondage’ means the status or condition of a debtor arising from a pledge by the debtor of his personal services or those of a person under his control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined or if the principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.

(4) ‘Forced labor’ means any type of labor or services performed or provided by a person rendered through another person’s coercion of the person providing the labor or services.

This definition does not include labor or services performed or provided by a person in the custody of the Department of Corrections or a local jail, detention center, or correctional facility.

(5) ‘Involuntary servitude’ means a condition of servitude induced through coercion.

(6) ‘Person’ means an individual, corporation, partnership, charitable organization, or another legal entity.

(7) ‘Sex trafficking’ means the recruitment, harboring, transportation, provision, or obtaining of a person for one of the following when it is induced by force, fraud, or coercion or the person performing the act is under the age of eighteen years and anything of value is given, promised to, or received, directly or indirectly, by any person:

(a) criminal sexual conduct pursuant to Section 16‑3‑651;

(b) criminal sexual conduct in the first degree pursuant to Section 16‑3‑652;

(c) criminal sexual conduct in the second degree pursuant to Section 16‑3‑653;

(d) criminal sexual conduct in the third degree pursuant to Section 16‑3‑654;

(e) criminal sexual conduct with a minor pursuant to Section 16‑3‑655;

(f) engaging a child for sexual performance pursuant to Section 16‑3‑810;

(g) producing, directing, or promoting sexual performance by a child pursuant to Section 16‑3‑820;

(h) sexual battery pursuant to Section 16‑3‑651;

(i) sexual conduct pursuant to Section 16‑3‑800; or

(j) sexual performance pursuant to Section 16‑3‑800.

(8) ‘Services’ means an act committed at the behest of, under the supervision of, or for the benefit of another person.

(9) ‘Victim of trafficking in persons’ or ‘victim’ means a person who has been subjected to the crime of trafficking in persons.”

**Trafficking in persons, offenses restructured, minor victims**

SECTION 2. Section 16‑3‑2020 of the 1976 Code is amended to read:

“Section 16‑3‑2020. (A) A person is guilty of trafficking in persons if he:

(1) recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, knowing that the victim will be subjected to, or for the purposes of, sex trafficking, forced labor or services, involuntary servitude or debt bondage through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of trafficking in persons;

(2) aids, abets, or conspires with another person to violate the criminal provisions of this section; or

(3) knowingly gives, agrees to give, or offers to give anything of value so that any person may engage in commercial sexual activity with another person when he knows that the other person is a victim of trafficking in persons.

(B) A person convicted of a violation of subsection (A) is guilty of a felony and, upon conviction:

(1) for a first offense, must be imprisoned not more than fifteen years;

(2) for a second offense, must be imprisoned not more than thirty years;

(3) for a third or subsequent offense, must be imprisoned not more than forty‑five years.

(C) If the victim of an offense contained in this section is under the age of eighteen, the person convicted under this section is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years. For a second or subsequent offense, if the victim is under the age of eighteen, the person convicted under this section is guilty of a felony and, upon conviction, must be imprisoned not more than forty‑five years.

(D) A business owner who uses his business in a way that participates in a violation of this article, upon conviction, must be imprisoned for not more than ten years in addition to the penalties provided in this section for each violation.

(E) A plea of guilty or the legal equivalent entered pursuant to a provision of this article by an offender entitles the victim of trafficking in persons to all benefits, rights, and compensation granted pursuant to Section 16‑3‑1110.

(F) In a prosecution of a person who is a victim of trafficking in persons, it is an affirmative defense that he was under duress or coerced into committing the offenses for which he is subject to prosecution, if the offenses were committed as a direct result of, or incidental or related to, trafficking. A victim of trafficking in persons convicted of a violation of this article or prostitution may motion the court to vacate the conviction and expunge the record of the conviction. The court may grant the motion on a finding that the person’s participation in the offense was a direct result of being a victim.

(G) If the victim was a minor at the time of the offense, the victim of trafficking in persons may not be prosecuted in court pursuant to this article or a prostitution offense, if it is determined after investigation that the victim committed the offense as a direct result of, or incidental or related to, trafficking.

(H) The human trafficking specialized service providers must be certified by the Attorney General through criteria established by the Human Trafficking Task Force. The Attorney General, through the task force, must also establish necessary criteria for Human Trafficking Acute Crisis Care and Resource Centers to be established in the communities of South Carolina. Once the service providers are certified and the assessment centers are open, the information must be disseminated to the family court bench and bar as well as law enforcement to be utilized in carrying out the mandates of this statute. The court must determine the most appropriate way to provide specialized services to the juveniles to address the concerns relating to human trafficking.

(I) Evidence of the following facts or conditions do not constitute a defense in a prosecution for a violation of this article, nor does the evidence preclude a finding of a violation:

(1) the victim’s sexual history or history of commercial sexual activity, the specific instances of the victim’s sexual conduct, opinion evidence of the victim’s sexual conduct, and reputation evidence of the victim’s sexual conduct;

(2) the victim’s connection by blood or marriage to a defendant in the case or to anyone involved in the victim’s trafficking;

(3) the implied or express consent of a victim to acts which violate the provisions of this section do not constitute a defense to violations of this section;

(4) age of consent to sex, legal age of marriage, or other discretionary age; and

(5) mistake as to the victim’s age, even if the mistake is reasonable.

(J) A person who violates the provisions of this section may be prosecuted by the State Grand Jury, pursuant to Section 14‑7‑1600, when a victim is trafficked in more than one county or a trafficker commits the offense of trafficking in persons in more than one county.”

**Savings clause**

SECTION 3. 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 4. This act takes effect upon approval by the Governor.

Ratified the 14th day of May, 2018.

Approved the 17th day of May, 2018.

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