~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 21, 2018

**H. 3329**

Introduced by Reps. Fry, Clemmons, Crawford, Duckworth, Atwater, Cobb‑Hunter, Elliott, B. Newton, Daning and Henegan

S. Printed 2/21/18--H.

Read the first time January 10, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3329) to amend Section 16‑3‑2010, as amended, Code of Laws of South Carolina, 1976, relating to definitions for the Article on trafficking in persons, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting language and inserting:

/ SECTION 1. Section 16‑3‑2010 of the 1976 Code, as last amended by Act 7 of 2015, is further 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 ~~another~~ 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) ~~‘Trafficking in persons’ means when a victim is subjected to or a person attempts to subject a victim to sex trafficking, forced labor or services, involuntary servitude, or debt bondage by employing one of the following:~~

~~(a)~~ ~~physically restraining or threatening to physically restrain another person;~~

~~(b)~~ ~~knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or other immigration document, or another actual or purported government identification document, of the victim;~~

~~(c)~~ ~~extortion or blackmail;~~

~~(d)~~ ~~causing or threatening to cause financial harm to the victim;~~

~~(e)~~ ~~facilitating or controlling a victim’s access to a controlled substance; or~~

~~(f)~~ ~~coercion.~~

~~(10)~~ ‘Victim of trafficking in persons’ or ‘victim’ means a person who has been subjected to the crime of trafficking in persons.”

SECTION 2. Section 16‑3‑2020 of the 1976 Code, as last amended by Act 74 of 2015, is further amended to read:

“Section 16‑3‑2020. (A) A person who 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.

(B) ~~A person who recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, 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 subsection (A), is guilty of trafficking in persons.~~

~~(C)~~ For a first offense, the person is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

~~(D)~~(C) For a second offense, the person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

~~(E)~~(D) For a third or subsequent offense, the person is guilty of a felony~~,~~ and, upon conviction, must be imprisoned not more than forty‑five years.

~~(F)~~(E) If the victim of an offense contained in this section is under the age of eighteen, ~~an additional term of fifteen years may be imposed in addition and must be consecutive to the penalty prescribed for a violation of this section~~ the person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years. And, for a second or subsequent offense, if the victim is under the age of eighteen, the person is guilty of a felony and, upon conviction, must be imprisoned not more than forty‑five years.

~~(G)~~(F) A person who aids, abets, or conspires with another person to violate the criminal provisions of this section must be punished in the same manner as provided for the principal offender and is considered a trafficker. A person is considered a trafficker if he 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.

~~(H)~~(G) 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.

~~(I)~~(H) 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.

~~(J)~~(I) 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. ~~A victim of trafficking in persons is not subject to prosecution pursuant to this article or prostitution, if the victim was a minor at the time of the offense and committed the offense as a direct result of, or incidental or related to, trafficking.~~

(J) 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.

(K) 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.

~~(K)~~(L) 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.

~~(L)~~(M) 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.”

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.

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

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 16‑3‑2010, AS AMENDED, 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, AS AMENDED, 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.

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

SECTION 1. Section 16‑3‑2010 of the 1976 Code, as last amended by Act 7 of 2015, is further 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 another 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) ~~‘Trafficking in persons’ means when a victim is subjected to or a person attempts to subject a victim to sex trafficking, forced labor or services, involuntary servitude, or debt bondage by employing one of the following:~~

~~(a)~~ ~~physically restraining or threatening to physically restrain another person;~~

~~(b)~~ ~~knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or other immigration document, or another actual or purported government identification document, of the victim;~~

~~(c)~~ ~~extortion or blackmail;~~

~~(d)~~ ~~causing or threatening to cause financial harm to the victim;~~

~~(e)~~ ~~facilitating or controlling a victim’s access to a controlled substance; or~~

~~(f)~~ ~~coercion.~~

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SECTION 2. Section 16‑3‑2020 of the 1976 Code, as last amended by Act 74 of 2015, is further amended to read:

“Section 16‑3‑2020. (A) A person who 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.

(B) ~~A person who recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, 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 subsection (A), is guilty of trafficking in persons.~~

~~(C)~~ For a first offense, the person is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

~~(D)~~(C) For a second offense, the person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

~~(E)~~(D) For a third or subsequent offense, the person is guilty of a felony, and, upon conviction, must be imprisoned not more than forty‑five years.

~~(F)~~(E) If the victim of an offense contained in this section is under the age of eighteen, ~~an additional term of fifteen years may be imposed in addition and must be consecutive to the penalty prescribed for a violation of this section~~ the person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years. And, for a second or subsequent offense, if the victim is under the age of eighteen, the person is guilty of a felony and, upon conviction, must be imprisoned not more than forty‑five years.

~~(G)~~(F) A person who aids, abets, or conspires with another person to violate the criminal provisions of this section must be punished in the same manner as provided for the principal offender and is considered a trafficker. A person is considered a trafficker if he 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.

~~(H)~~(G) 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.

~~(I)~~(H) 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.

~~(J)~~(I) 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. ~~A victim of trafficking in persons is not subject to prosecution pursuant to this article or prostitution, if the victim was a minor at the time of the offense and committed the offense as a direct result of, or incidental or related to, trafficking.~~

(J) 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 pursuant to Section 16‑15‑90 or 16‑15‑100, if it is determined after investigation that the victim committed the offense as a direct result of, or incidental or related to, trafficking. However, a juvenile offender with a status offense believed by the court to be related to trafficking or putting the juvenile at a higher risk for trafficking may be held pursuant to this subsection until the court can determine a safe and appropriate disposition of the case taking into account the risk involved in the juvenile’s behavior prior to detention.

(K) 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.

(L) 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.”

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.

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

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