**South Carolina General Assembly**

124th Session, 2021-2022

**H. 3107**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Bennett, Chumley, Burns, Thigpen, McCravy, V.S. Moss, J.L. Johnson, Felder, Haddon, McGarry, Jones and Huggins

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Introduced in the House on January 12, 2021

Currently residing in the House Committee on **Judiciary**

Summary: Human trafficking and child exploitation

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2020 House Prefiled

12/9/2020 House Referred to Committee on **Judiciary**

1/12/2021 Scrivener's error corrected

1/12/2021 House Introduced and read first time ([House Journal‑page 75](file:///h:\hj\20210112.docx))

1/12/2021 House Referred to Committee on **Judiciary** ([House Journal‑page 75](file:///h:\hj\20210112.docx))

1/14/2021 House Member(s) request name added as sponsor: J.L.Johnson

1/26/2021 House Member(s) request name added as sponsor: Felder

2/2/2021 House Member(s) request name added as sponsor: Haddon

2/3/2021 House Member(s) request name added as sponsor: McGarry

2/25/2021 House Member(s) request name added as sponsor: Jones

3/11/2021 House Member(s) request name added as sponsor: Huggins

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\3107_20201209.docx)

[1/8/2021](file:///p:\pprever\2021-22\3107_20210108.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 6 TO CHAPTER 5, TITLE 6 SO AS TO PROVIDE DEFINITIONS, IMPOSE CONTINUING DUTIES ON RETAILERS OF INTERNET‑ENABLED DEVICES REGARDING FILTERS THAT BLOCK BY DEFAULT WEBSITES THAT ARE KNOWN TO FACILITATE HUMAN TRAFFICKING OR PROSTITUTION AND WEBSITES THAT DISPLAY CHILD PORNOGRAPHY, REVENGE PORNOGRAPHY, OR OBSCENE MATERIAL HARMFUL TO MINORS AND TO ESTABLISH PROCEDURES TO DEACTIVATE THE FILTER AND TO ENSURE QUALITY CONTROL OVER THE FILTERS, TO PROVIDE A REMEDY FOR WEBSITES THAT ARE BLOCKED MISTAKENLY, TO PROVIDE CIVIL PENALTIES, TO PROVIDE EXCEPTIONS, TO ESTABLISH “THE SOUTH CAROLINA HUMAN TRAFFICKING AND CHILD EXPLOITATION PREVENTION GRANT FUND”, AND TO IMPOSE A NOMINAL ADMISSION FEE ON LIVE ADULT ENTERTAINMENT ESTABLISHMENTS TO BE REMITTED TO THE DEPARTMENT OF REVENUE.

Whereas, the United States Supreme Court in *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656 (2004) found that the legislative branch “may undoubtedly act to encourage the use of filters.....It could also take steps to promote their development by industry, and their use by parents,” which was the Supreme Court’s way of signaling to the legislative branch to pass filter legislation that requires consumers to opt‑in to having access to obscene materials that are harmful to minors on Internet‑enabled devices, since filters are the least restrictive means; and

Whereas, the United States Supreme Court found in *Ginsberg v. New York*, 390 U.S. 629 (1968) that a physical display state statute that required physical brick and mortar stores to put physical obscene material behind a physical blinder rack was constitutional under first amendment heightened scrutiny, which means that a digital blinder rack statute that requires digital retailers to put digital obscene material behind a digital blinder rack is also constitutional on the same legal basis; and

Whereas, because the Supreme Court of the United States in *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973) made it clear that the states have a compelling interest to uphold community standards of decency, a statute requiring a filter deactivation fee regarding websites displaying obscene material and an adult service business admission fee are constitutional for being rationally related to a narrowly tailored compelling state interest; and

Whereas, the Texas Supreme Court in *Combs v. Texas Entertainment Association,* et al., 347 S.W.3d 277 (Sup. Ct. Tex. 2011), relying on federal constitutional law, found that a statute that required a five‑dollar admission fee to an adult service business that was to be remitted back to the state to enable the state to uphold community standards of decency was constitutional under First Amendment heightened scrutiny, which means that a one‑time twenty‑dollar filter deactivation fee to enter the digital strip club on Internet‑enabled devices is constitutional on the same legal basis, if remitted to the state to be used in the same manner; and

Whereas, sex trafficking has moved from the street corner to the smartphone, which means that making websites that facilitate human trafficking and prostitution inaccessible by default on Internet‑enabled devices will do more to curb the demand for such offenses more so than any other measure since the inception of the Internet; and

Whereas, live adult entertainment establishments contribute to a culture that tolerates the sexual objectification and exploitation of women, and contribute to the need for community‑based services to respond to victims of all forms of sexual exploitation, including sexual harassment, trafficking, and sexual assault; and

Whereas, crime statistics show that the presence of live adult entertainment establishments may result in an increase in prohibited secondary sexual activities, such as prostitution, and other crimes in the surrounding community; and

Whereas, the State House is generally opposed to online censorship unless the content is injurious to children or promotes human trafficking ‑ only then is the State House for limited censorship; and

Whereas, retailers of Internet‑enabled devices market their products as being family‑friendly when they are often not, constituting unfair trade practices. Now, therefore,

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

SECTION 1. Chapter 5, Title 39 of the 1976 Code is amended by adding:

“Article 6

Indecent Deceptive Trade Practices

Section 39‑5‑610. This article may be cited as the ‘Human Trafficking and Child Exploitation Prevention Act.’

Section 39‑5‑620. The purpose of this article is to regulate indecent deceptive trade practices causing existing laws to catch up to modern technology, to protect consumers from harm, and to stop contemporary community standards of decency from eroding.

Section 39‑5‑630. As used in this article:

(1) ‘Cellular telephone’ means a communication device containing a unique electronic serial number that is programmed into its computer chip by its manufacturer and whose operation is dependent on the transmission of that electronic serial number along with a mobile identification number, which is assigned by the cellular telephone carrier, in the form of radio signals through cell sites and mobile switching stations.

(2) ‘Child pornography’ has the same meaning as defined in 18 U.S.C. 2256 and describes an offense pursuant to Section 16‑15‑410.

(3) ‘Computer’ has the meaning as defined in 18 U.S.C. 1030.

(4) ‘Consumer’ means an individual who purchases or leases for personal, family, or household purposes an Internet‑enabled device.

(5) ‘Data communications device’ means an electronic device that receives electronic information from one source and transmits or routes it to another including, but not limited to, any bridge, router, switch, or gateway.

(6) ‘Filter’ means a digital blocking capability, hardware, or software that restricts or blocks Internet access to websites, electronic mail, chat, or other Internet‑based communications based on category, site, or content. The term means a filter or a digital blinder rack that can be deactivated upon the satisfaction of certain nominal conditions.

(7) ‘Harmful to minors’ has the same meaning as defined in Section 16‑15‑375.

(8) ‘Human Trafficking’ means trafficking in persons and has the same meaning as defined in Section 16‑3‑2010(9).

(9) ‘Internet’ has the same meaning as defined in 31 U.S.C. 5362.

(10) ‘Internet‑enabled device’ means a cellular telephone, computer, data communications device, or other product manufactured, distributed, or sold in this State that provides Internet access or plays a material role in distributing content on the Internet.

(11) ‘Internet service provider’ means a person or entity engaged in the business of providing Internet access, a computer, or communications facility or device through which a consumer may obtain access to the Internet. The term does not include a common carrier if it provides only telecommunications service.

(12) ‘Knowingly’ means intentionally.

(13) ‘Live adult entertainment establishment’ means a business that:

(a) is an adult business as defined in Section 57‑25‑120;

(b) provides live nude entertainment or live nude performances for an audience of two or more individuals; and

(c) permits the consumption of beer, wine, liquor, or other alcoholic beverages on the premises.

(14) ‘Minor’ has the same meaning as defined in Section 16‑15‑375.

(15) ‘Nude’ means:

(a) entirely unclothed; or

(b) clothed in a manner that exposes to public view, at any time, the bare female breast below a point immediately above the top of the areola, genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including swimsuits, lingerie, or latex covering.

(16) ‘Nongovernmental group’ means a nonprofit organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code of 1986, having as a primary purpose ending sexual violence in this State, for programs for the prevention of sexual violence, outreach programs, and technical assistance to and support of youth and rape crisis centers working to prevent sexual violence. The term also includes individuals and groups that are doing anything to uphold community standards of decency.

(17) ‘Obscene material’ has the same meaning as described in Section 16‑15‑305. The term includes, but is not limited to, websites that:

(a) are known to facilitate human trafficking or prostitution; and

(b) display or depict images that are harmful to minors or that constitute sexual activity, sexual explicit nudity, sexual conduct, sadomasochistic abuse, or revenge pornography.

(18) ‘Personal identification information’ means any information that identifies a person, including an individual’s photograph, social security number, driver identification number, name, email address, address, or telephone number.

(19) ‘Prostitution’ means performing sexual acts for money and describes an offense defined in Sections 16‑15‑90, 16‑15‑100, and 16‑15‑110.

(20) ‘Retailer’ means any person who regularly engages in the manufacturing, sale, offer for sale or lease of Internet‑enabled devices or services in this State that make content accessible on the Internet. The term includes Internet service providers and suppliers and manufacturers of Internet‑enabled devices that materially play a role in distributing content on the Internet or that make content accessible that are subject to the jurisdiction of this State.

(21) ‘Revenge pornography’ is the distribution of sexually explicit images or videos of individuals without their permission or the disclosure of private images.

(22) ‘Sexual activity’ has the same meaning as defined in Section 16‑15‑375.

(23) ‘Sexual conduct’ has the same meaning as defined in Section 16‑15‑305.

(24) ‘Sexually explicit nudity’ has the same meaning as defined in Section 16‑15‑375.

(25) ‘Social media website’ means an Internet website or application that enables users to communicate with each other by posting information, comments, messages, or images and that meets all of the following requirements:

(a) is open to the public;

(b) has more than seventy‑five million subscribers;

(c) has not been specifically affiliated with any one religion or political party from its inception; and

(d) provides a means for the website’s users to report obscene materials and has in place procedures for evaluating those reports and removing obscene material.

Section 39‑5‑640. (A) A retailer that manufactures, sells, offers for sale, leases, or distributes an Internet‑enabled device shall ensure that the product is equipped with an active and operating filter before a sale that blocks by default websites that:

(1) are known to facilitate human trafficking or prostitution; and

(2) display child pornography, revenge pornography, or obscene material harmful to minors.

(B) A retailer that manufactures, sells, offers for sale, leases, or distributes an Internet‑enabled device shall:

(1) make reasonable and ongoing efforts to ensure that a product’s filter functions properly;

(2) establish a reporting mechanism, such as a website or call center, to allow a consumer to report unblocked websites displaying content described in subsection (A) or to report blocked websites that are not displaying content described in subsection (A);

(3) report child pornography received through the reporting mechanism to the National Center For Missing and Exploited Children’s cyber tip line in accordance with 18 U.S.C. 2258A;

(4) not block access to websites that:

(a) are social media websites that provide a means for the website’s users to report obscene materials and have in place procedures for evaluating those reports and removing obscene material;

(b) serve primarily as a search engine; or

(c) display complete movies that meet the qualifications for a ‘G,’ ‘PG,’ ‘PG‑13,’ or ‘R’ rating by the Classification and Ratings Administration, as those qualifications existed on September 1, 2020.

(C) Except as provided by subsection (D), a retailer of an Internet‑enabled device may not provide to a consumer, methods, source codes, or other operating instructions for deactivating a product’s filter.

(D) A retailer of an Internet‑enabled device shall deactivate the filter after a consumer:

(1) requests that the capability be disabled;

(2) presents personal identification information to verify that the consumer is eighteen years of age or older;

(3) acknowledges receiving a warning regarding the potential danger of deactivating the filter; and

(4) pays a one‑time twenty‑dollar filter deactivation fee to be remitted quarterly to the Department of Revenue to be deposited into the South Carolina human trafficking and child exploitation prevention grant fund established under Section 39‑5‑680(A).

(E) The filter deactivation fee in subsection (D)(4) is not content based but collected and remitted to the Department of Revenue to help the State bear the costs of upholding community standards of decency and of combating sex‑related offenses and is to be used as set forth in Section 39‑5‑680(E). The department shall prescribe the administration, payment, collection, and enforcement of the fee imposed by subsection (D)(4). The department annually may adjust the one‑time fee to account for inflation.

(F) Nothing in this article may be construed to prevent a retailer of an Internet‑enabled device from charging a reasonable separate fee to deactivate the filter, which it may retain for profit.

(G) The Attorney General shall prepare and make available to retailers a form that includes all content that must be in the warning described in subsection (D)(3).

(H) Nothing in this article may be construed to require a retailer of an Internet‑enabled device to create a database or registry that contains the names or personal identification information of adults who knowingly chose to deactivate a product’s filter. A retailer of an Internet‑enabled device shall take due care to protect the privacy rights of adult consumers under this section and may not disclose the names or personal identification information of an adult consumer who decided to deactivate a product’s filter.

Section 39‑5‑650. (A) Pursuant to Section 39‑5‑640(B)(2), if the filter blocks a website that is not displaying content described in Section 39‑5‑640(A) and the block is reported to a call center or reporting mechanism, the website must be unblocked within a reasonable time, but in no event later than five business days after the block is first reported. A consumer may seek judicial relief to unblock a website that was wrongfully blocked by the filter. The prevailing party in a civil litigation may seek attorneys’ fees, costs, and other forms of relief.

(B) Pursuant to Section 39‑5‑640(B)(2), if a retailer of an Internet‑enabled device is unresponsive to a report of a website displaying content described in Section 39‑5‑640(A) that has breached the filter, the Attorney General or a consumer may file a civil suit. The Attorney General or a consumer may seek damages of up to five hundred dollars for each website that was reported but not subsequently blocked. The prevailing party in the civil action may seek attorneys’ fees, costs, and other forms of relief.

(C) A retailer of an Internet‑enabled device that fails to comply with a duty described in subsections (A) and (B) has committed an unfair and deceptive trade practice in violation of Section 39‑5‑20 and is subjected to the penalties for violating that section.

(D) It is an affirmative defense in a civil action to a charge of violating this section that the dissemination of the content described in Section 39‑5‑640(A) was limited to institutions or organizations having scientific, educational, or other similar justifications for displaying the material.

Section 39‑5‑660. (A) A retailer of an Internet‑enabled device is guilty of an offense if it knowingly:

(1) sells an Internet‑enabled device without activated blocking capability that at least makes an attempt to block by default websites that display content described in Section 39‑5‑640(A);

(2) violates Section 39‑5‑640(C);

(3) fails to comply with the requirements of Section 39‑5‑640(D) before deactivating the filter; and

(4) discloses to a third party the name or the personal identification information of adult consumers who have elected to deactivate a product’s filter in violation of Section 39‑5-640(H) without a court order directing otherwise.

(B) A retailer of an Internet‑enabled device must be fined no more than one thousand dollars for a first offense and no more than two thousand five hundred dollars for any subsequent offenses.

(C) A retailer that commits an offense with two prior convictions under subsection (A) is guilty of a Class C misdemeanor.

(D) A retailer of an Internet‑enabled device that commits an offense under subsection(A) has committed an unfair and deceptive trade practice in violation of Section 39‑5‑20 and is subjected to the penalties under that section.

(E) Only the Attorney General or district attorney can enforce this section.

Section 39‑5‑670. (A) This article does not apply to:

(1) an occasional sale of an Internet‑enabled device by a person that is not regularly engaged in the trade business of selling Internet‑enabled devices;

(2) products produced or sold before enactment; and

(3) independent third party routers that are not affiliated with an Internet service provider.

(B) This article does not apply to a retailer of an Internet‑enabled device that is not subject to the jurisdiction of this State.

Section 39‑5‑680. (A) There is established in the State Treasury a special fund to be known as the ‘South Carolina Human Trafficking and Child Exploitation Prevention Grant Fund’ (the fund) to be administered by the Attorney General or the Attorney General’s designee. The interagency task force established to develop and implement a state plan for the prevention of trafficking in persons established under Section 16‑3‑2050 can provide advice and recommendations as to how the money in the fund should be spent.

(B) The purpose of the fund is:

(1) to promote the development throughout the State of locally‑based and supported nonprofit programs for the survivors of sex‑related offenses and to support the quality of services provided;

(2) to empower any governmental and, especially, nongovernmental groups working to uphold community standards of decency, to protect children, to strengthen families, or to develop, expand, or to prevent or offset the costs of sex‑related offenses; and

(3) not to promote a culture of perpetual victimhood but to maximize human flourishing and to protect the public’s safety, health, and welfare.

(C) The purpose can be interpreted broadly to meet the evolving needs of the State.

(D) The fund consists of:

(1) deactivation fees collected by the Department of Revenue from retailers of Internet‑enabled devices under section 39‑5‑640(D)(4);

(2) admission fees collected by the Department of Revenue from live adult entertainment establishments under Section 39‑5‑690(A); and

(3) any other appropriations, gifts, grants, donations, and bequests.

(E) Money deposited into the fund only may be used by:

(1) the Attorney General or the Attorney General’s designee for grants to governmental and nongovernmental entities and individuals that are working to uphold community standards of decency, to protect children, to strengthen families, or to develop, expand, or strengthen programs for victims of human trafficking or child exploitation, including providing grants for:

(a) the needs of the interagency task force established under Section 16‑3‑2050;

(b) the needs of the various city or county human trafficking task forces or coalitions located in South Carolina;

(c) the needs of the South Carolina State Office of Victim Assistance;

(d) services to help women with substance abuse problems;

(e) counselors and victim advocates who are trained to assist victims of domestic violence and sexual abuse;

(f) shelters for women, particularly those who have been exposed to prostitution or sex trafficking;

(g) research‑based organizations;

(h) faith‑based organizations working to uphold community standards of decency and assisting victims of human trafficking or other sex offenses;

(i) child advocacy centers;

(j) organizations that provide legal advocacy to abused, neglected, and at‑risk children;

(k) physical and mental health services;

(l) temporary and permanent housing placement;

(m) employment, placement, education, and training;

(n) school districts;

(o) family counseling and therapy;

(p) the needs of the South Carolina State Law Enforcement Division;

(q) musical, writing, design, cinematic, or pictorial creative art projects that promote decency;

(r) regional nonprofit providers of civil legal services to provide legal assistance for sexual assault victims;

(s) grants to support technology in rape crisis centers;

(t) sexual violence awareness and prevention campaigns; and

(u) scholarships for students demonstrating outstanding character or leadership skills.

(2) any other state agency or organization for the purpose of conducting human trafficking enforcement programs or to uphold community standards of decency.

(F) Notwithstanding any other provision of law, interest accruing on investments and deposits of the fund must be credited to the fund, may not revert to the general fund, and must be carried forward into the subsequent fiscal year.

(G) Any balance in the fund remaining unexpended at the end of a fiscal year may not revert to the general fund but must be carried forward into the subsequent fiscal year.

(H) The Attorney General or the Attorney General’s designee shall evaluate activities conducted under this section each year and, on or before February 15, submit an annual report containing the evaluation to the President of the Senate and the Speaker of the House of Representatives and notify the legislature and the interagency task force that the report is available. The report must include:

(1) the amount of deactivations fees received under Section 39‑5‑640(D)(4);

(2) the amount of admission fees received under Section 39‑5‑690(A);

(3) the manner in which the funds in the account maintained under subsection (E) were distributed; and

(4) the manner in which each entity receiving a grant under subsection (E) used the grant money.

(I) The Attorney General or the Attorney General’s designee may by rule:

(1) determine eligibility requirements for any grant awarded under this section;

(2) require a grant recipient to offer minimum services for a period of time before receiving a grant and to continue to offer minimum services during the grant period; and

(3) require a grant recipient to submit financial and programmatic reports.

(J) The Attorney General or the Attorney General’s designee may not spend more than ten percent of the available funds on the administration of the fund.

Section 39‑5‑690. (A) A five‑dollar admission fee is imposed for each entry by each customer admitted to a live adult entertainment establishment to be remitted quarterly to the department and deposited into the South Carolina Human Trafficking and Child Exploitation Prevention Grant Fund established pursuant to Section 39‑5‑680(A). The Department of Revenue shall prescribe the method of administration, payment, collection, and enforcement of the fee imposed by this section.

(B) The admission fee is not content based but imposed and remitted to the State to offset secondary harmful effects and to help the State uphold contemporary community standards of decency and to combat sex‑related crimes and is to be used as set forth in Section 39‑5‑680(E).

(C) The admission fee of subsection (A) is in addition to all other taxes imposed on the business.

(D) Each live adult entertainment establishment shall record daily in the manner required by the department the number of customers admitted to the business. The business shall maintain the records for the period required by the department and make the records available only for inspection and audit on request by the department. The records may not contain the names or personal information of any of the customers.

(E) This section does not require a live adult entertainment establishment to impose a tax on a customer of the business. A business has the discretion to determine the manner in which the business derives the money required to pay the tax imposed under this section.”

SECTION 2. This act takes effect upon approval by the Governor.

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