**South Carolina General Assembly**

125th Session, 2023-2024

**H. 3826**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. M.M. Smith, Burns and Davis

Companion/Similar bill(s): 506, 3706

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Introduced in the House on January 26, 2023

Currently residing in the House

Summary: Protection of Minors from Pornography and Obscenities Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/26/2023 House Introduced and read first time ([House Journal‑page 7](h:\hj\20230126.docx))

1/26/2023 House Referred to Committee on **Judiciary** ([House Journal‑page 7](h:\hj\20230126.docx))

2/8/2023 Scrivener's error corrected

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**VERSIONS OF THIS BILL**

[01/26/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3826_20230126.docx)

[02/08/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3826_20230208.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS by enacting THE “PROTECTION OF MINORS FROM PORNOGRAPHY AND OBSCENITIES ACT” BY AMENDING SECTION 16‑15‑375, RELATING TO DEFINITIONS APPLICABLE TO THE ARTICLE REGARDING OBSCENITY LAWS, SO AS TO AMEND THE DEFINITIONS OF “HARMFUL TO MINORS” AND “MATERIAL” TO INCLUDE ANY PORTION OF MATERIALS AND PERFORMANCES THAT MAY BE CONSIDERED OBSCENE, AND TO DEFINE THE TERM “PROFANE LANGUAGE”; AND BY AMENDING SECTION 16‑15‑385, RELATING TO THE OFFENSES OF DISSEMINATING HARMFUL MATERIAL TO MINORS AND EXHIBITING HARMFUL PERFORMANCES TO MINORS, DEFENSES, AND PENALTIES, SO AS TO LIMIT THE AFFIRMATIVE DEFENSE PROVIDED BY THE STATUTE ONLY TO THE TEACHING OF AGE‑APPROPRIATE SEX EDUCATION AND HUMAN BIOLOGY CURRICULUM.

Whereas, it is the intention of the General Assembly that Article 3, Chapter 15, Title 16 of the South Carolina Code of Laws, “Obscenity, Material Harmful to Minors, Child Exploitation, and Child Prostitution,” prohibit dissemination and promotion of any and all materials “harmful to minors” regardless of if the obscene or pornographic content is present in only a part of the materials or throughout the content; and

Whereas, contrary to the intent of Article 3, Chapter 15, Title 16, some persons and organizations disseminate or promote to children materials that contain, in part, content that is obscene, pornographic, or contains profane language claiming that the current wording of:

1. Section 16‑15‑375(1) allows such content because the materials do not violate the law if they are “taken as a whole”;

2. Section 16‑15‑375(1)(c) allows such content because the materials have “serious literary, artistic, political, or scientific value for minors” if they are “taken as a whole”;

3. Section 16‑15‑375(2) does not include prohibitions against profane language; or

4. Section 16‑15‑385(C)(3) exempts schools and other entities from “harmful to minors” prohibitions as long as they are “carrying out a legitimate function”; and

Whereas, it is the intention of the General Assembly to correct and further clarify the provisions of Article 3, Chapter 15, Title 16, to eliminate these loopholes and ambiguities in the law. Now, therefore,

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

SECTION 1. This act may be cited as the “Protection of Minors from Pornography and Obscenities Act”.

SECTION 2. Section 16‑15‑375 of the S.C. Code is amended to read:

Section 16‑15‑375. The following definitions apply to Section 16‑15‑385, disseminating or exhibiting to minors harmful material or performances; Section 16‑15‑387, employing a person under the age of eighteen years to appear in a state of sexually explicit nudity in a public place; Section 16‑15‑395, first degree sexual exploitation of a minor; Section 16‑15‑405, second degree sexual exploitation of a minor; Section 16‑15‑410, third degree sexual exploitation of a minor; Section 16‑15‑415, promoting prostitution of a minor; and Section 16‑15‑425, participating in prostitution of a minor.

(1) “Harmful to minors” means that quality of any material or performance, or a portion of any material or performance, that depicts sexually explicit nudity or, sexual activity, or contains profane language and that, taken as a whole, has the following characteristics:

(a) the average adult person applying contemporary community standards would find that the material or performance, or any portion of the material or performance, has a predominant tendency to appeal to a prurient interest of minors in sex or the obscene; and

(b) the average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or, sexual activity, or use of profane language in the material or performance, or any portion of the material or performance, is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and

(c) to a reasonable person, the material or performance, or any portion of the material or performance, taken as a whole lacks serious literary, artistic, political, or scientific value for minors.

(2) “Material” means pictures, drawings, video recordings, films, digital electronic files, words, gestures, or other visual depictions or representations but not material consisting entirely of written words.

(3) “Minor” means an individual who is less than eighteen years old.

(4) “Prostitution” means engaging or offering to engage in sexual activity with or for another in exchange for anything of value.

(5) “Sexual activity” includes any of the following acts or simulations thereof:

(a) masturbation, whether done alone or with another human or animal;

(b) vaginal, anal, or oral intercourse, whether done with another human or an animal;

(c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female;

(d) an act or condition that depicts bestiality, sado‑masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(e) excretory functions;

(f) the insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

(6) “Sexually explicit nudity” means the showing of:

(a) uncovered, or less than opaquely covered human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast; or

(b) covered human male genitals in a discernibly turgid state.

(7) “Profane language” means language or gestures communicated in any form or manner that, in context, depict or describe sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards.

SECTION 3. Section 16‑15‑385(C) of the S.C. Code is amended to read:

(C) Except as provided in item (3) of this subsection, mistake of age is not a defense to a prosecution under this section. It is an affirmative defense under this section that:

(1) the defendant was a parent or legal guardian of a minor, but this item does not apply when the parent or legal guardian exhibits or disseminates the harmful material for the sexual gratification of the parent, guardian, or minor.

(2) the defendant was a school, church, museum, public, school, college, or university library, government agency, medical clinic, or hospital carrying out its legitimate function, or an employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of his employment. Such legitimate function or duty is strictly limited to the age‑appropriate teaching of a sex education program or human biology curriculum for which express written consent from the minor’s parent or legal guardian has been obtained in advance, and excludes school and classroom libraries.

(3) before disseminating or exhibiting the harmful material or performance, the defendant requested and received a driver's license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the material or performance was disseminated or exhibited was at least eighteen years old, and the defendant reasonably believed the minor was at least eighteen years old.

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.

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 6. This act takes effect upon approval by the Governor.

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