**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4948**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Guffey, Mitchell, Felder, T. Moore, Brewer, Sessions and Pope

Companion/Similar bill(s): 995, 4973

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Introduced in the House on January 25, 2024

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

Summary: Sexual exploitation of minors, morphed child pornography

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 1/25/2024 House Introduced and read first time (House Journal‑page 44)

 1/25/2024 House Referred to Committee on **Judiciary** (House Journal‑page 44)

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=4948&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[01/25/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4948_20240125.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 16‑15‑375, RELATING TO DEFINITIONS APPLICABLE TO CERTAIN OFFENSES AGAINST MINORS, SO AS TO DEFINE THE TERM “IDENTIFIABLE MINOR”; BY AMENDING SECTION 16‑15‑395, RELATING TO FIRST DEGREE SEXUAL EXPLOITATION OF A MINOR, BY AMENDING SECTION 16‑15‑405, RELATING TO SECOND DEGREE SEXUAL EXPLOITATION OF A MINOR, AND BY AMENDING SECTION 16‑15‑410, RELATING TO THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR, ALL SO AS TO INCORPORATE IDENTIFIABLE MINORS INTO THE PURVIEW OF THE STATUTE TO ADDRESS MORPHED CHILD IMAGES.

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

SECTION 1. 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 that depicts sexually explicit nudity or sexual activity 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 has a predominant tendency to appeal to a prurient interest of minors in sex; and

 (b) the average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in 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 taken as a whole lacks serious literary, artistic, political, or scientific value for minors.

 (2) “Identifiable minor” means a person who was a minor at the time the image was created, altered, adapted, or modified, or whose image as a minor was used in the creating, altering, adapting, or modifying of the image, and who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristics, such as a unique birthmark, or other recognizable feature. The term may not be construed to require proof of the actual identity of the identifiable minor.

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

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

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

 (5)(6) “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)(7) “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.

SECTION 2. Section 16‑15‑395 of the S.C. Code is amended to read:

 Section 16‑15‑395. (A) An individual commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:

 (1) uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation a minor engaged in sexual activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation, or a visual depiction, including any photograph, film, video, picture, or computer or computer‑generated image or picture, whether made or produced by electronic, mechanical, or other means, which has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct;

 (2) permits a minor under his custody or control to engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation a minor engaged in sexual activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation, or a visual depiction, including any photograph, film, video, picture, or computer or computer‑generated image or picture, whether made or produced by electronic, mechanical, or other means, which has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct;

 (3) transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation a minor engaged in sexual activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation, or a visual depiction, including any photograph, film, video, picture, or computer or computer‑generated image or picture, whether made or produced by electronic, mechanical, or other means, which has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or

 (4) records, photographs, films, develops, duplicates, produces, or creates a digital electronic file for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation a minor engaged in sexual activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation, or a visual depiction, including any photograph, film, video, picture, or computer or computer‑generated image or picture, whether made or produced by electronic, mechanical, or other means, which has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

 (B) In a prosecution pursuant to this section, the trier of fact may infer that a participant in a sexual activity or a state of sexually explicit nudity depicted in material as a minor through its title, text, visual representations, or otherwise, is a minor.

 (C) Mistake of age is not a defense to a prosecution pursuant to this section.

 (D) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned for not less than three years nor more than twenty years. No part of the minimum sentence of imprisonment may be suspended nor is the individual convicted eligible for parole until he has served the minimum term of imprisonment. Sentences imposed pursuant to this section must run consecutively with and commence at the expiration of another sentence being served by the person sentenced.

SECTION 3. Section 16‑15‑405 of the S.C. Code is amended to read:

 Section 16‑15‑405. (A) An individual commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he:

 (1) records, photographs, films, develops, duplicates, produces, or creates digital electronic file material that contains a visual representation of a minor engaged in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulationdepicting a minor engaged in sexual activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation, or a visual depiction, including any photograph, film, video, picture, or computer or computer‑generated image or picture, whether made or produced by electronic, mechanical, or other means, which has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or

 (2) distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulationdepicting a minor engaged in sexual activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation, or a visual depiction, including any photograph, film, video, picture, or computer or computer‑generated image or picture, whether made or produced by electronic, mechanical, or other means, which has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

 (B) In a prosecution pursuant to this section, the trier of fact may infer that a participant in sexual activity or a state of sexually explicit nudity depicted in material as a minor through its title, text, visual representations, or otherwise, is a minor.

 (C) Mistake of age is not a defense to a prosecution pursuant to this section.

 (D) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not less than two years nor more than ten years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum sentence.

SECTION 4. Section 16‑15‑410 of the S.C. Code is amended to read:

 Section 16‑15‑410. (A) An individual commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaging in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulationdepicting a minor engaged in sexual activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation, or a visual depiction, including any photograph, film, video, picture, or computer or computer‑generated image or picture, whether made or produced by electronic, mechanical, or other means, which has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

 (B) In a prosecution pursuant to this section, the trier of fact may infer that a participant in sexual activity or a state of sexually explicit nudity depicted as a minor through its title, text, visual representation, or otherwise, is a minor.

 (C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than ten years.

 (D) This section does not apply to an employee of a law enforcement agency, including the State Law Enforcement Division, a prosecuting agency, including the South Carolina Attorney General's Office, or the South Carolina Department of Corrections who, while acting within the employee's official capacity in the course of an investigation or criminal proceeding, is in possession of material that contains a visual representation of a minor engaging in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.

SECTION 5. 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 6. This act takes effect upon approval by the Governor.

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