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Indicates New Matter

RECALLED

February 25, 2015

**S. 196**

Introduced by Senators Hutto, L. Martin, Bryant, Campsen, S. Martin and Lourie

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Read the first time February 10, 2015.

**A** **BILL**

TO AMEND SECTION 14‑7‑1610, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STATE GRAND JURY SYSTEM AND LEGISLATIVE FINDINGS AND APPLICABILITY, SO AS TO INCLUDE CRIMES INVOLVING TRAFFICKING PERSONS IN THE PURVIEW OF THE STATUTE; TO AMEND SECTION 14‑7‑1630, AS AMENDED, RELATING TO JURISDICTION OF THE STATE GRAND JURY, SO AS TO INCLUDE CRIMES INVOLVING TRAFFICKING IN PERSONS IN THE PURVIEW OF THE STATUTE; TO AMEND SECTION 16‑3‑2010, RELATING TO DEFINITIONS FOR PURPOSES OF TRAFFICKING IN PERSONS, SO AS TO REVISE THE DEFINITION OF “SEX TRAFFICKING”; BY ADDING SECTION 16‑3‑2100 SO AS TO REQUIRE THE POSTING OF INFORMATION REGARDING THE NATIONAL HUMAN TRAFFICKING RESOURCE CENTER HOTLINE IN CERTAIN BUSINESS ESTABLISHMENTS, PROVIDE LANGUAGE FOR THE POSTING, AND PROVIDE A PENALTY FOR THE FAILURE TO POST THE INFORMATION; AND TO AMEND SECTION 16‑3‑2050, RELATING TO THE INTERAGENCY TASK FORCE FOR THE PREVENTION OF TRAFFICKING IN PERSONS, SO AS TO REVISE THE MEMBERSHIP OF THE TASK FORCE.

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

SECTION 1. Section 14‑7‑1610(A) and (H) of the 1976 Code, as last amended by Act 82 of 2007, is further amended to read:

“(A) It is the intent of the General Assembly to enhance the grand jury system and to improve the ability of the State to detect and eliminate criminal activity. The General Assembly recognizes the great importance of having the federal authorities available for certain investigations. The General Assembly finds that crimes involving narcotics, dangerous drugs, or controlled substances, trafficking in persons, as well as crimes involving obscenity, often transpire or have significance in more than one county of this State. When this occurs, these crimes are most effectively detected and investigated by a grand jury system with the authority to cross county lines.

(H) Accordingly, the General Assembly concludes that a state grand jury should be allowed to investigate certain crimes related to narcotics, dangerous drugs or controlled substances, criminal gang activity, trafficking in persons, and obscenity and also should be allowed to investigate crimes involving public corruption, election laws, and environmental offenses.”

SECTION 2. Section 14‑7‑1630(A) of the 1976 Code, as last amended by Act 280 of 2008, is further amended to read:

“(A) The jurisdiction of a state grand jury impaneled pursuant to ~~the provisions of~~ this article extends throughout the State. The subject matter jurisdiction of a state grand jury in all cases is limited to the following offenses:

(1) a crime involving narcotics, dangerous drugs, or controlled substances, or a crime arising out of or in connection with a crime involving narcotics, dangerous drugs, or controlled substances, including, but not limited to, money laundering as specified in Section 44‑53‑475, obstruction of justice, perjury or subornation of perjury, or any attempt, aiding, abetting, solicitation, or conspiracy to commit one of the aforementioned crimes, if the crime is of a multi‑county nature or has transpired or is transpiring or has significance in more than one county of this State;

(2) a crime involving criminal gang activity or a pattern of criminal gang activity pursuant to ~~the provisions of~~ Article 3, ~~of~~ Chapter 8, Title 16;

(3) a crime, statutory, common law or other, involving public corruption as defined in Section 14‑7‑1615, a crime, statutory, common law or other, arising out of or in connection with a crime involving public corruption as defined in Section 14‑7‑1615, and any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime, statutory, common law or other, involving public corruption as defined in Section 14‑7‑1615;

(4) a crime involving the election laws, including, but not limited to, those named offenses ~~as~~ specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws;

(5) a crime involving computer crimes, pursuant to Chapter 16, Title 16, or a conspiracy or solicitation to commit a crime involving computer crimes;

(6) a crime involving terrorism, or a conspiracy or solicitation to commit a crime involving terrorism. Terrorism includes an activity that:

(a) involves an act dangerous to human life that is a violation of the criminal laws of this State;

(b) appears to be intended to:

(i) intimidate or coerce a civilian population;

(ii) influence the policy of a government by intimidation or coercion; or

(iii) affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(c) occurs primarily within the territorial jurisdiction of this State;

(7) a crime involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws;

(8) a crime involving obscenity, including, but not limited to, a crime as provided in Article 3, Chapter 15, Title 16, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving obscenity;

(9) a crime involving the knowing and wilful making of, aiding and abetting in the making of, or soliciting or conspiring to make a false, fictitious, or fraudulent statement or representation in an affidavit regarding an alien’s lawful presence in the United States, as defined by law, if the number of violations exceeds twenty or if the public benefit received by a person from a violation or combination of violations exceeds twenty thousand dollars;

(10) a crime involving financial identity fraud or identity fraud involving the false, fictitious, or fraudulent creation or use of documents used in an immigration matter as defined in Section 16‑13‑525, if the number of violations exceeds twenty, or if the value of the ascertainable loss of money or property suffered by a person or persons from a violation or combination of violations exceeds twenty thousand dollars;

(11) a crime involving the knowing and wilful making of, aiding or abetting in the making of, or soliciting or conspiring to make a false, fictitious, or fraudulent statement or representation in a document prepared or executed as part of the provision of immigration assistance services in an immigration matter, as defined by law, if the number of violations exceeds twenty, or if a benefit received by a person from a violation or combination of violations exceeds twenty thousand dollars; ~~and~~

(12) a knowing and wilful crime involving actual and substantial harm to the water, ambient air, soil or land, or both soil and land. This crime includes a knowing and wilful violation of the Pollution Control Act, the Atomic Energy and Radiation Control Act, the State Underground Petroleum Environmental Response Bank Act, the State Safe Drinking Water Act, the Hazardous Waste Management Act, the Infectious Waste Management Act, the Solid Waste Policy and Management Act, the Erosion and Sediment Control Act, the South Carolina Mining Act, and the Coastal Zone Management Act, or a knowing and wilful crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a knowing and wilful crime involving the environment if the anticipated actual damages, including, but not limited to, the cost of remediation, ~~are~~ is two million dollars or more, as certified by an independent environmental engineer who must be contracted by the Department of Health and Environmental Control. If the knowing and wilful crime is a violation of federal law, ~~then~~ a conviction or an acquittal pursuant to federal law for the same act is a bar to the impaneling of a state grand jury pursuant to this section~~.~~; and

(13) a crime involving or relating to the offense of trafficking in persons, as defined in Section 16‑3‑2020, 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. Section 16‑3‑2010(7) of the 1976 Code, as added by Act 258 of 2012, is amended to read:

“(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 ~~forced to perform~~ 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)~~ ~~performance pursuant to Section 16‑3‑800;~~

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

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

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

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

SECTION 4. Section 16‑3‑2020 of the 1976 Code is 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 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) For a second offense, the person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(E) 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) 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.

(G) 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 the person solicits or participates in prostitution with another person knowing that the other person is a victim of trafficking in persons.

(H) 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) 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) 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.

(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)~~(1) the victim’s connection by blood or marriage to a defendant in the case or to anyone involved in the victim’s trafficking;

~~(3)~~(2) 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)~~(3) age of consent to sex, legal age of marriage, or other discretionary age; and

~~(5)~~(4) mistake as to the victim’s age, even if the mistake is reasonable.

(L) A victim’s sexual history or history of commercial sexual activity, the specific instances of a victim’s sexual conduct, opinion evidence of a victim’s sexual conduct, and reputation evidence of a victim’s sexual conduct are not admissible by a defendant in a criminal action.

~~(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 5. Section 16‑3‑2030(A) of the 1976 Code is amended to read:

“(A) The principal owners of a business, a business entity, including a corporation, partnership, charitable organization, or another legal entity, that knowingly aids or participates in an offense provided in this article is criminally liable for the offense and will be subject to a fine or loss of business license in the State, or both. In addition, the court may consider disgorgement of profit from activity in violation of this article and disbarment from state and local government contracts.”

SECTION 6. Section 16‑3‑2040(D) of the 1976 Code is amended to read:

“(D) Restitution for this section, pursuant to Section 16‑3‑1270, means payment for all injuries, specific losses, and expenses, including, but not limited to, attorney’s fees, sustained by a crime victim resulting from an offender’s criminal conduct pursuant to Section 16‑3‑1110(12)(a). In addition, the court may order an amount representing the value of the victim’s labor or services.”

SECTION 7. Section 16‑3‑2050 of the 1976 Code is amended by adding an appropriately numbered subsection to read:

“( ) To the extent that funds are appropriated, the task force may make grants to or contract with a state agency, local government, or private victims service organization to develop or expand service programs for victims. A recipient of a grant or contract shall report annually to the task force the number and demographic information of all victims receiving services pursuant to the grant or contract.”

SECTION 8. Section 16‑3‑2060 of the 1976 Code is amended by adding an appropriately numbered subsection to read:

“( ) A victim’s sexual history or history of commercial sexual activity, the specific instances of a victim’s sexual conduct, opinion evidence of a victim’s sexual conduct, and reputation evidence of a victim’s sexual conduct are not admissible by a defendant in a civil action.”

SECTION 9. Article 19, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑2100. (A) The following establishments are required to post the information contained in subsection (B) regarding the National Human Trafficking Resource Center Hotline:

(1) an establishment which has been declared a nuisance for prostitution pursuant to Chapter 43, Title 15;

(2) an adult business, including a nightclub, bar, restaurant, or another similar establishment in which a person appears in a state of sexually explicit nudity, as defined in Section 16‑15‑375, or seminudity, as defined in Section 57‑25‑120;

(3) businesses and establishments that offer massage or bodywork services by any person who is not licensed under Chapter 30, Title 40;

(4) emergency rooms within any hospital;

(5) urgent care centers;

(6) any hotel, motel, room, or accommodation furnished to transients for which fees are charged in this State;

(7) all agricultural labor contractors and agricultural labor transporters as defined pursuant to Section 41‑27‑120; and

(8) all airports, train stations, bus stations, rest areas, and truck stops.

(B) The information must be posted in each public restroom for the business or establishment and a prominent location conspicuous to the public at the entrance of the establishment where posters and notices are customarily posted on a poster no smaller than eight and one‑half by eleven inches in size and must state in both English and Spanish on the same poster information relevant to the hotline, including the following or language substantially similar:

‘If you or someone you know is being forced to engage in any activity and cannot leave, whether it is commercial sex, housework, farm work, or any other activity, call the National Human Trafficking Resource Center Hotline at 1‑888‑373‑7888 to access help and services. Victims of human trafficking are protected under federal law and the laws of South Carolina. The hotline is:

(1) available twenty‑four hours a day, seven days a week;

(2) operated by a nonprofit, nongovernmental organization;

(3) anonymous and confidential;

(4) accessible in one hundred seventy languages;

(5) able to provide help, referral to services, training, and general information.’

(C) The Department of Revenue, the State Law Enforcement Division, and the Department of Transportation, as appropriate depending on the regulatory control or authority the respective department exercises over the establishment, are directed to provide each establishment with the notice required to be posted by this section. The departments shall post on the departments’ websites a sample of the notice required to be posted which must be accessible for download. The business must download and post the notice in not less than sixteen point font.

(D) The Department of Revenue, the State Law Enforcement Division, or the Department of Transportation, as appropriate, is authorized to issue a written warning to an establishment which fails to post the required notice provided in this section and may assess a fine of not more than fifty dollars for each subsequent violation. Each day that the establishment remains in violation of this section is considered a separate and distinct violation and the establishment may be fined accordingly.

(E) The South Carolina Human Trafficking Task Force, Department of Revenue, and Department of Transportation are directed to collaborate on the design of the required notice to be posted and may partner to develop materials, and shall have the design finalized no later than one hundred twenty days after the effective date of this section. Establishments required to post the notice must be in compliance no later than six months after the effective date of this action.

(F) This section does not apply to establishments providing entertainment in theatres, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances when the performances presented are expressing matters of serious literary, artistic, scientific, or political value.”

SECTION 10. Section 16‑3‑2050(B) and (C) of the 1976 Code, as added by Act 258 of 2012, is amended to read:

“(B) The task force shall consist of, at a minimum, representatives from:

(1) the Office of the Attorney General, who must be chair;

(2) the South Carolina Labor, Licensing and Regulation;

(3) the South Carolina Police Chiefs Association;

(4) the South Carolina Sheriffs’ Association;

(5) the State Law Enforcement Division;

(6) the Department of Health and Environmental Control Board;

(7) ~~the United States Department of Labor;~~

~~(8)~~ the State Office of Victim Assistance;

~~(9)~~(8) the South Carolina Commission on Prosecution Coordination;

~~(10)~~(9) the Department of Social Services;

~~(11)~~(10) a representative from the Office of the Governor;

~~(12)~~(11) a representative from the Department of Employment and Workforce; and

~~(13)~~(12) two persons appointed by the Attorney General from nongovernmental organizations, especially those specializing in trafficking in persons, those representing diverse communities disproportionately affected by trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of trafficking in persons.

(C) The Attorney General shall invite representatives of the United States Department of Labor, the United States Attorneys’ offices, and ~~of~~ federal law enforcement agencies’ offices within the State, including the Federal Bureau of Investigation and the United States Immigration and Customs Enforcement office, to be members of the task force.”

SECTION 11. 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 12. If any section, subsection, item, subitem, 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, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 13. This act takes effect upon approval by the Governor.

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