

South Carolina

S.C. Code Ann.

S.C. Code Ann. § 16-15-305. Disseminating, procuring or promoting obscenity unlawful; definitions; penalties; obscene material designated contraband.

- (A) It is unlawful for any person knowingly to disseminate obscenity. A person disseminates obscenity within the meaning of this article if he:
 - (1) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, digital electronic file, or other representation or description of the obscene;
 - (2) presents or directs an obscene play, dance, or other performance, or participates directly in that portion thereof which makes it obscene;
 - (3) publishes, exhibits, or otherwise makes available anything obscene to any group or individual; or
 - (4) exhibits, presents, rents, sells, delivers, or provides; or offers or agrees to exhibit, present, rent, or to provide: any motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, video tapes and recordings, or any matter or material of whatever form which is a representation, description, performance, or publication of the obscene.
- (B) For purposes of this article any material is obscene if:
 - (1) to the average person applying contemporary community standards, the material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (C) of this section;
 - (2) the average person applying contemporary community standards relating to the depiction or description of sexual conduct would find that the material taken as a whole appeals to the prurient interest in sex;
 - (3) to a reasonable person, the material taken as a whole lacks serious literary, artistic, political, or scientific value; and
 - (4) the material as used is not otherwise protected or privileged under the Constitutions of the United States or of this State.
- (C) As used in this article:
 - (1) "sexual conduct" means:
 - (a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted, whether between human beings, animals, or a combination thereof;
 - (b) masturbation, excretory functions, or lewd exhibition, actual or simulated, of the genitals, pubic hair, anus, vulva, or female breast nipples including male or female genitals in a state of sexual stimulation or arousal or covered male genitals in a discernably turgid state;
 - (c) an act or condition that depicts actual or simulated 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;
 - (d) an act or condition that depicts actual or simulated touching, caressing, or fondling of, or other similar physical contact with, the covered or exposed genitals, pubic or anal regions, or female breast nipple, whether alone or between humans, animals, or a human and

an animal, of the same or opposite sex, in an act of actual or apparent sexual stimulation or gratification; or

(e) an act or condition that depicts 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.

(2) "patently offensive" means obviously and clearly disagreeable, objectionable, repugnant, displeasing, distasteful, or obnoxious to contemporary standards of decency and propriety within the community.

(3) "prurient interest" means a shameful or morbid interest in nudity, sex, or excretion and is reflective of an arousal of lewd and lascivious desires and thoughts.

(4) "person" means any individual, corporation, partnership, association, firm, club, or other legal or commercial entity.

(5) "knowingly" means having general knowledge of the content of the subject material or performance, or failing after reasonable opportunity to exercise reasonable inspection which would have disclosed the character of the material or performance.

- (D) Obscenity must be judged with reference to ordinary adults except that it must be judged with reference to children or other especially susceptible audiences or clearly defined deviant sexual groups if it appears from the character of the material or the circumstances of its dissemination to be especially for or directed to children or such audiences or groups.
- (E) As used in this article, "community standards" used in determining prurient appeal and patent offensiveness are the standards of the area from which the jury is drawn.
- (F) It is unlawful for any person knowingly to create, buy, procure, or process obscene material with the purpose and intent of disseminating it.
- (G) It is unlawful for a person to advertise or otherwise promote the sale of material represented or held out by them as obscene.
- (H) A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both.
- (I) Obscene material disseminated, procured, or promoted in violation of this section is contraband and may be seized by appropriate law enforcement authorities.

§ 16-15-325. Participation in preparation of obscene material prohibited; penalties.

- Any individual who knowingly:
 - (a) photographs himself or any other individual or animal for purposes of preparing an obscene film, photograph, negative, slide, videotapes, motion picture, or digital electronic files for the purpose of dissemination; or
 - (b) models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph, negative, slide, videotapes, motion picture, or digital electronic files for the purpose of dissemination is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than one year and fined not more than one thousand dollars.

§ 16-15-335. Permitting minor to engage in any act constituting violation of this article prohibited; penalties.

An individual eighteen years of age or older who, in any manner, knowingly hires, employs, uses, or permits a person under the age of eighteen years to do or assist in doing an act or thing constituting an offense pursuant to this article and involving any material, act, or thing he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

§ 16-15-342. Criminal solicitation of a minor; defenses; penalties.

- (A) A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.
- (B) Consent is a defense to a prosecution pursuant to this section if the person under the age of eighteen, or the person reasonably believed to be under the age of eighteen, is at least sixteen years old.
- (C) Consent is not a defense to a prosecution pursuant to this section if the person under the age of eighteen, or the person reasonably believed to be under the age of eighteen, is under the age of sixteen.
- (D) It is not a defense to a prosecution pursuant to this section, on the basis of consent or otherwise, that the person reasonably believed to be under the age of eighteen is a law enforcement agent or officer acting in an official capacity.
- (E) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than ten years, or both.

§ 16-15-345. Disseminating obscene material to person under age eighteen prohibited; penalties.

An individual eighteen years of age or older who knowingly disseminates to a person under the age of eighteen years material which he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

§ 16-15-355. Disseminating obscene material to minor twelve years of age or younger prohibited; penalties.

An individual eighteen years of age or older who knowingly disseminates to a minor twelve years of age or younger material which he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than fifteen years.

§ 16-15-365. Exposure of private parts in lewd and lascivious manner, aiding or procuring person to perform such act, or permitting use of premises for such act prohibited; penalties.

Any person who wilfully and knowingly exposes the private parts of his person in a lewd and lascivious manner and in the presence of any other person, or aids or abets any such act, or who procures another to perform such act, or any person, who as owner, manager, lessee, director, promoter, or agent, or in any other capacity knowingly hires, leases, or permits the land, building, or premises of which he is owner, lessee, or tenant, or over which he has control, to be used for purposes of any such act, is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than six months or fined not more than five hundred dollars, or both.

§ 16-15-375. Definitions applicable to §§ 16-15-385 through 16-15-425.

- 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) "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) "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.

§ 16-15-385. Disseminating harmful material to minors and exhibiting harmful performance to minor defined; defenses; penalties.

- (A) A person commits the offense of disseminating harmful material to minors if, knowing the character or content of the material, he:
 - (1) sells, furnishes, presents, or distributes to a minor material that is harmful to minors; or
 - (2) allows a minor to review or peruse material that is harmful to minors.A person does not commit an offense under this subsection when he employs a minor to work in a theater if the minor's parent or guardian consents to the employment and if the minor is not allowed in the viewing area when material harmful to minors is shown.
- (B) A person commits the offense of exhibiting a harmful performance to a minor if, with or without consideration and knowing the character or content of the performance, he allows a minor to view a live performance which is harmful to minors.
- (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.
 - (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.
- (D) 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 or fined not more than five thousand dollars, or both.

§ 16-15-387. Employment of person under eighteen to appear in public in state of sexually explicit nudity; mistake of age; penalties.

- (A) It is unlawful for a person to employ a person under the age of eighteen years to appear in a state of sexually explicit nudity, as defined in Section 16-15-375(6), in a public place.
- (B) Mistake of age is not a defense to a prosecution pursuant to this section. 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 or fined not more than five thousand dollars, or both.

§ 16-15-395. First degree sexual exploitation of a minor defined; presumptions; defenses; penalties.

- (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 for a live performance or for the purpose of producing material that contains a visual representation depicting this activity;
 - (2) permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity;
 - (3) transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; 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.
- (B) In a prosecution under this section, the trier of fact may infer that a participant in a sexual activity 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 under 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.

§ 16-15-405. Second degree sexual exploitation of a minor defined; presumptions; defenses; penalties.

- (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

(2) distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.

- (B) In a prosecution under this section, the trier of fact may infer that a participant in sexual activity 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 under 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.

§ 16-15-410. Third degree sexual exploitation of a minor defined; penalties; exception.

- (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.
- (B) In a prosecution pursuant to this section, the trier of fact may infer that a participant in sexual activity 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.

§ 16-15-415. Promoting prostitution of a minor defined; defenses; penalties.

- (A) An individual commits the offense of promoting prostitution of a minor if he knowingly:
 - (1) entices, forces, encourages, or otherwise facilitates a minor to participate in prostitution; or
 - (2) supervises, supports, advises, or promotes the prostitution of or by a minor.
- (B) Mistake of age is not a defense to a prosecution under this section.
- (C) An individual 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 may be suspended nor is the individual convicted eligible for parole until he has served the minimum sentence. Sentences imposed pursuant to this section must run consecutively with and must commence at the expiration of another sentence being served by the individual sentenced.

§ 16-15-425. Participating in prostitution of a minor defined; defenses; penalties.

- (A) An individual commits the offense of participating in the prostitution of a minor if he is not a minor and he patronizes a minor prostitute. As used in this

section, "patronizing a minor prostitute" means:

- (1) soliciting or requesting a minor to participate in prostitution;
 - (2) paying or agreeing to pay a minor, either directly or through the minor's agent, to participate in prostitution; or
 - (3) paying a minor, or the minor's agent, for having participated in prostitution, pursuant to a prior agreement.
- (B) Mistake of age is not a defense to a prosecution under this section.
 - (C) 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 five years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum term. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any other sentence being served by the individual sentenced.

§ 16-15-435. Circuit solicitor to request search and arrest warrants for violations of §§ 16-15-305 through 16-15-325; hearing on obscenity issue.

- (A) A search warrant or arrest warrant for a violation of §§ 16-15-305, 16-15-315, or 16-15-325 may be issued only upon request of a circuit solicitor.
- (B) Following seizure of allegedly obscene property pursuant to a warrant requested by a solicitor, and issued by a neutral and detached magistrate based on supporting affidavits, any interested party may request and the court having appropriate jurisdiction must promptly conduct an adversarial hearing for the purpose of obtaining a judicial determination, based on a preponderance of the evidence, of the obscenity issue.

§ 16-15-445. Seizure and forfeiture of equipment used in committing violation; hearing; disposition of forfeited property; allocation of sale proceeds.

- (A) All equipment used directly by a person in committing a violation of Sections 16-15-305, 16-15-342, 16-15-395, 16-15-405, or 16-15-410, including necessary software, may be seized by the law enforcement agency making the arrest and ordered forfeited by the court in which the conviction was obtained.
- (B) Prior to entering a forfeiture order, the court must conduct a hearing to determine ownership and the rights of innocent third parties with respect to the property, and notice of the hearing must be given to all interested parties. The court must incorporate into its forfeiture order provisions necessary to protect the interests of innocent third parties.
- (C) Subject to the limitations of subsection (B), property forfeited pursuant to court order must be destroyed by the arresting law enforcement agency, unless that law enforcement agency can show good cause for retaining the property. Ownership of property so retained vests in the arresting law enforcement agency which may use the property in the performance of its duties, destroy it, or sell it at public auction. Retained property may be sold at public auction after giving notice, in a newspaper of general circulation in the county, of the date, time, and place of the auction and a description of the property to be auctioned. After payment of the expenses of the auction, one-half of the net proceeds may be retained by the arresting law enforcement agency, and one-half must be remitted to the State Treasurer for deposit to the credit of the Victim's Compensation Fund.

§ 16-15-250. Communicating obscene messages to other persons without consent.

It is unlawful for a person to anonymously write, print, telephone, transmit a digital electronic file, or by other manner or means communicate, send, or deliver to another person within this State, without that person's consent, any **obscene**, profane, indecent, vulgar, suggestive, or immoral message.

A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

§ 56-5-3885. Unlawful to display obscene bumper sticker.

- (A) No person may operate a motor vehicle in this State which has affixed or attached to any part of the motor vehicle which is visible to members of the public not occupying the vehicle any sticker, decal, emblem, or other device containing **obscene** or indecent words, photographs, or depictions.
- (B) **Obscene** words, photographs, or depictions must be defined and interpreted as provided in Section 16-15-305(B), (C), (D), and (E).
- (C) A sticker, decal, emblem, or device is indecent when:
 - (1) taken as a whole, it describes, in a patently offensive way, as determined by contemporary community standards, sexual acts, excretory functions, or parts of the human body; and
 - (2) taken as a whole, it lacks serious literary, artistic, political, or scientific value.
- (D) A person who violates the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding two hundred dollars.

§ 57-25-20. Obscene or indecent billboards prohibited.

- (A) No billboard shall be erected or displayed containing **obscene** or indecent words, photographs, or depictions.
 - (B) **Obscene** words, photographs, or depictions must be defined and interpreted as provided in Section 16-15-305(B), (C), (D), and (E).
 - (C) A billboard is indecent when:
 - (1) taken as a whole, it describes, in a patently offensive way, as determined by contemporary community standards, sexual acts, excretory functions, or parts of the human body; and
 - (2) taken as a whole, it lacks serious literary, artistic, political, or scientific value.
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FILTERING LAWS:

§ 10-1-205. Computers in public libraries; regulation of Internet access.

- A computer which:
 - (1) is located in a lending library supported by public funds, public school library or media arts center, or in the library of a public institution of higher learning as defined in Section 59-103-5;
 - (2) can access the Internet; and
 - (3) is available for use by the public or students, or both;

- shall have its use policies determined by the library's or center's governing board, as appropriate. The governing board must adopt policies intended to reduce the ability of the user to access web sites displaying information or material in violation of Article 3 of Chapter 15 of Title 16.

§ 10-1-206. Library pilot program for Internet filtering software.

- (A)
 - (1) A pilot program is hereby established to assess the feasibility of installing Internet filtering software in libraries or institutions as defined in Section 10-1-205, if funding is available.
 - (2) The Budget and Control Board shall be responsible for implementing this program and selecting appropriate filtering software. A minimum of three filtering software programs shall be tested.
- (B)
 - (1) The Budget and Control Board shall request institutions to voluntarily participate in the pilot program. Pilot areas shall be located in the upstate, midstate, and lowcountry areas of South Carolina. The board shall make every effort to ensure that one public school and one public library in each area are selected. Participating institutions must already have filtering software in place that meets the requirements of item (2) of this subsection or agree to install recommended filtering software purchased by the State.
 - (2) Participating institutions in the pilot area must equip Internet accessible computers with one of the software filtering devices provided by the Budget and Control Board, if not equipped, as provided by (B)(1). This software must incorporate web-filtering technology designed to eliminate or reduce the ability of the computer to access web sites displaying pornographic pictures or any other obscene material as defined by law. Selected software must be able to distinguish between pornographic and obscene web sites and medical research web sites.
- (C) The Budget and Control Board shall be responsible for evaluating this program. The evaluation shall be based on the following criteria:
 - (1) the filtering programs' ability to limit or restrict access to sources of information or images that are considered obscene including hard-core pornography and child pornography;
 - (2) the filtering programs' ability to limit or restrict access to sources of pornographic information or images that could be obscene as to minors or harmful to minors; and
 - (3) the filtering programs' ability to successfully access and not filter legitimate research sites.
- (D) Any person blocked from an Internet site he believes contains material that does not meet the criteria listed in items (1) or (2) of subsection (C) above, and desires to access such Internet site, may make a request that the institution unblock the specified site. If the institution determines that the site does not fall within the criteria listed in items (1) or (2) of subsection (C), the institution shall unblock such Internet site. An adult patron may request unfiltered access to the Internet for serious literary, artistic, political, or scientific purposes, and the institution may temporarily disable the blocking software for such purposes.
- (E) The pilot program shall take effect on the effective date of this section and shall expire on June 29, 2001. By December 1, 2001, the board shall report its findings to the General Assembly.
- (F) Medical schools are exempt from the pilot program.

