**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63‑19‑2470 SO AS TO CREATE THE OFFENSE OF SEXTING, PROVIDE A FINE AND AN EDUCATIONAL PROGRAM FOR A PERSON WHO COMMITS THE OFFENSE, AND PROVIDE FOR EXPUNGEMENT OF THE PERSON’S RECORD UPON COMPLETION OF AN EDUCATIONAL PROGRAM AND PAYMENT OF A FINE.

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

SECTION 1. Article 23, Chapter 19, Title 63 of the 1976 Code, as added by Act 361 of 2008, is amended by adding:

“Section 63‑19‑2470. (A) Notwithstanding any other provision of law, it is unlawful for a person who is at least twelve years of age but less than eighteen years of age to use a telecommunications device to knowingly transmit or distribute to another person who is under the age of eighteen a photograph, text message with a photo attachment, or other transmitted material of any kind depicting himself or another minor in a state of sexual activity or a state of sexually explicit nudity.

(B) A person who violates subsection (A) is guilty of the misdemeanor offense of sexting and, upon conviction, must be fined not more than one hundred dollars and must complete an educational program as provided in subsection (C).

(C) Each circuit solicitor has the prosecutorial discretion as defined in Chapter 22, Title 17 and shall establish, as a matter of prosecutorial discretion, an educational program for persons who are convicted of or plead guilty or nolo contendere to a violation of subsection (A). The educational program must include, but is not limited to, the:

(1) legal consequences of and penalties for sharing materials depicting minors engaged in sexual activity or in a state of sexually explicit nudity, including applicable federal and state statutes;

(2) nonlegal consequences of sharing materials depicting minors engaged in sexual activity or in a state of sexually explicit nudity including, but not limited to, the:

(a) effect on relationships;

(b) loss of educational and employment opportunities; and

(c) removal from certain school programs and extracurricular activities;

(3) unique characteristics of cyberspace and the Internet, including searching and replicating material, and the long‑term consequences of sharing materials depicting minors engaged in sexual activity or in a state of sexually explicit nudity with an infinite audience; and

(4) connection between bullying and cyberbullying and minors sharing materials depicting minors engaged in sexual activity or in a state of sexually explicit nudity.

(D) The educational program required by the provisions of this section must be under the direct supervision and control of the circuit solicitor; however, the solicitor may contract for services with a county or municipality in the circuit.

(E) The South Carolina Commission on Prosecution Coordination shall oversee the administrative procedures for the educational programs required by this section.

(F) A person who successfully completes the educational program provided in this section and pays the fine provided in subsection (B) immediately may have his record expunged of this offense.

(G) A person convicted of a violation of subsection (A) is not considered a sex offender and is not required to register as a sex offender pursuant to the provisions of Article 7, Chapter 3, Title 23.”

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

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