**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑19‑492 SO AS TO ENACT A STATEWIDE CURFEW FOR MINORS AND TO PROVIDE A CIVIL PENALTY FOR A VIOLATION OF THE CURFEW; AND TO PROVIDE A PROCEDURE FOR MUNICIPALITIES AND COUNTIES TO “OPT OUT” OF THE CURFEW.

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

SECTION 1. The purpose of this act is to:

(1) promote the general welfare and protect the general public through the reduction of juvenile violence and crime in the State;

(2) promote the safety and well‑being of the state’s youngest citizens, persons seventeen years of age and under, whose inexperience renders them particularly vulnerable to becoming participants in unlawful activities, particularly unlawful drug activities, and to being victimized by older perpetrators of crime; and

(3) foster and strengthen parental responsibility for children.

SECTION 2. Article 7, Chapter 17, Title 16 of the 1976 Code is amended by adding:

“Section 16‑17‑492. (A) As used in this section:

(1) ‘Curfew hours’ means the hours of 12:01 a.m. through 5:00 a.m. on Monday through Friday, and 1:00 a.m. through 5:00 a.m. on Saturday and Sunday.

(2) ‘Court’ means the family court, unless otherwise specified.

(3) ‘Emergency’ means unforeseen circumstances, or the status or condition resulting from them, requiring immediate action to safeguard life, limb, or property. The term ‘emergency’ includes, but is not limited to, fires, natural disasters, automobile accidents, or other similar circumstances.

(4) ‘Establishment’ means a privately‑owned place of business within the State operated for a profit, to which the public is invited, including, but not limited to, a place of amusement or entertainment. Concerning an establishment, the term ‘operator’ means a person, firm, association, partnership and its members or partners, or a corporation and its officers, conducting or managing an establishment.

(5) ‘Minor’ means a person seventeen years of age or younger who has not been emancipated by order of the family court.

(6) ‘Parent’ means:

(a) a person who is a biological or adoptive parent of a minor and who has legal custody of a minor, including either parent, if custody is shared under a court order or agreement;

(b) a person who is the biological or adoptive parent with whom a minor regularly resides;

(c) a person judicially appointed as a legal guardian of the minor; or

(d) a person eighteen years of age or older standing in loco parentis, as indicated by the written authorization of a person contained in subitems (a), (b), or (c) of this subsection, for the person to assume the care or physical custody of the child.

(7) ‘Person’ means an individual, and not an association, corporation, or another legal entity. ‘Person’ does not include a minor.

(8) ‘Public place’ means a place to which the public or a substantial group of the public has access, including, but not limited to, streets, highways, roads, sidewalks, alleys, avenues, parks, or the common areas of schools, hospitals, apartment houses, office buildings, transportation facilities, and shops.

(9) ‘Remain’ means to linger or stay at or upon a place or to fail to leave a place when requested to do so by a law enforcement officer or by the owner, operator, or other person in control of the place.

(B) It is unlawful for a minor, during curfew hours, to remain in or upon a public place within the State, to remain in a motor vehicle operating or parked in or on a public place or to remain in or on the premises of an establishment within the State unless the minor is:

(1) accompanied by a parent;

(2) involved in an emergency;

(3) engaged in an employment activity, or is going to or returning home from an activity without detour or stop;

(4) on the sidewalk or walkway directly abutting a place where he resides with a parent;

(5) attending an activity sponsored by a school, religious, or civic organization, by a public organization or agency, or by another similar organization or entity, which is supervised by adults, or the minor is going to or returning from an activity without detour or stop;

(6) on an errand at the direction of a parent, and the minor has in his possession written permission signed by the parent containing the following information:

(a) the name, signature, address, and telephone number of the parent authorizing the errand;

(b) the telephone number where the parent may be reached during the errand, the name of the minor, and a brief description of the errand;

(c) the minor’s destinations and the hours the minor is authorized to be engaged in the errand;

(7) involved in interstate travel through, or beginning or terminating in, this State; or

(8) exercising First Amendment rights protected by the United States Constitution, including the free exercise of religion, freedom of speech, and the right of assembly.

(C) It is unlawful for a parent or parents of a minor to knowingly permit, allow, or encourage the minor to violate the provisions of this section.

(D) It is unlawful for a person who is the owner or operator of a motor vehicle to knowingly permit, allow, or encourage a violation of the provisions of this section.

(E) It is unlawful for the operator of an establishment, or for a person who is an employee of the establishment, to knowingly permit, allow, or encourage a minor to remain upon the premises of the establishment during curfew hours. It is a defense to liability under this subsection that the operator or employee of an establishment promptly notified law enforcement that a minor was present at the establishment after curfew hours and refused to leave.

(F) It is unlawful for a person or minor to give a false name, address, or telephone number to an officer investigating a possible violation of the provisions of this section.

(G) Before taking enforcement action under this section, a law enforcement officer must conduct an immediate investigation for the purpose of ascertaining whether the presence of a minor in a public place, motor vehicle, or establishment during curfew hours violates the provisions of this section. If this investigation reveals that the presence of the minor violates the provisions of this section if the minor previously has:

(1) not been issued a warning for a violation, the officer must issue a verbal warning to the minor, which must be followed by a written warning mailed by the law enforcement agency to the minor and his parents; or

(2) been issued a warning for a violation of this section, the officer must charge the minor with a violation of this section and must issue a summons requiring the minor to appear in family or magistrates court.

(H) As soon as practicable, the officer must:

(1) release the minor to his parents;

(2) detain the minor for a period not to exceed the remainder of the curfew hours so that his parents may retrieve the minor; or

(3) if a minor refuses to give an officer his name and address, refuses to give the name and address of his parents, or if no parent can be located before the end of the applicable curfew hours, or if located, no parent appears to accept custody of the minor, the minor may be detained pursuant to item (2).

(I) If an investigation by an officer reveals that a person, including a parent or operator of an establishment, has violated subsection (D), (E), or (F), and if the person previously has not been issued a warning with respect to a violation, an officer must issue a verbal warning to the person, which must be followed by a written warning mailed by the law enforcement agency to the person. However, if a warning previously has been issued to that person, the officer must charge the person with a violation and must issue a summons directing the person to appear in general sessions court.

(J) A violation of the provisions of this section is not a criminal offense, but is a violation for which a civil penalty may be imposed by the appropriate court. The penalty must not exceed one thousand dollars for each violation and must be deposited into the state’s general fund.

(K)(1) Notwithstanding the provisions of this section, the governing body of a county by ordinance may suspend the application of the curfew provisions provided for in this section for the unincorporated area of the county; and

(2) the governing body of a municipality by ordinance may suspend the application of the curfew provisions provided for in this section for the municipality.”

SECTION 3. (A) The county election commission or the municipal election commission, as appropriate, shall place the question contained in this subsection on the ballot in November 2008 in a county in which the county governing body or the municipal governing body, as appropriate, has suspended application of the curfew law provided for in Section 16‑17‑492 by ordinance within ninety days before the 2010 general election. The state election laws apply to the referendum, mutatis mutandis. The State Board of Canvassers shall publish the results of the referendum and certify them to the Secretary of State. If the result of a referendum is in favor of reinstating the curfew within the county or municipality, Section 16‑17‑492 applies in that county or municipality after the result of the referendum is certified to the Secretary of State.

(B) The question put before the voters must read:

“Must the statewide curfew, however described, be reinstated in \_\_\_\_\_\_\_\_\_\_municipality/county?

Yes 

No 

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word ‘Yes’, and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word ‘No’.”

SECTION 4. 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 5. This act takes effect upon approval by the Governor.

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