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COMMITTEE AMENDMENT AMENDED AND ADOPTED

April 22, 2010

**S. 973**

Introduced by Senators Campsen, Rose and Elliott

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Read the first time January 12, 2010.

**A** **BILL**

TO AMEND TITLE 23, CHAPTER 3, ARTICLE 7 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “ELECTRONIC SECURING AND TARGETING OF ONLINE PREDATORS ACT (E‑STOP)”, BY ADDING SECTION 23‑3‑555, SO AS TO PROVIDE THAT A SEX OFFENDER WHO IS REQUIRED TO REGISTER WITH THE SEX OFFENDER REGISTRY MUST PROVIDE INFORMATION REGARDING THE OFFENDER’S INTERNET ACCOUNTS WITH INTERNET ACCESS PROVIDERS AND THE OFFENDER’S INTERNET IDENTIFIERS, AND TO PROVIDE THAT AN AUTHORIZED INTERNET ENTITY MAY REQUEST CERTAIN SEX OFFENDER REGISTRY INFORMATION FROM SLED, AND TO PROVIDE THAT SLED MUST PROVIDE CERTAIN SEX OFFENDER REGISTRY INFORMATION TO AN AUTHORIZED INTERNET ENTITY, AND TO PROVIDE THAT CERTAIN SEX OFFENDERS MUST, AS A CONDITION OF PROBATION OR PAROLE, BE PROHIBITED FROM USING THE INTERNET TO ACCESS SOCIAL NETWORKING WEBSITES, COMMUNICATE WITH OTHER PERSONS OR GROUPS FOR THE PURPOSE OF PROMOTING SEXUAL RELATIONS WITH PERSONS UNDER THE AGE OF EIGHTEEN, AND COMMUNICATE WITH PERSONS UNDER THE AGE OF EIGHTEEN.

Amend Title To Conform

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

SECTION 1. Sections 1 and 2 of this act may be cited as the “Electronic Securing and Targeting of Online Predators Act (E‑STOP)”.

SECTION 2. Article 7, Chapter 3, Title 23 of the 1976 Code is amended by adding:

“Section 23‑3‑555. (A) As used in this section:

(1) ‘Interactive computer service’ means an information service, system, or access software provider that offers users the capability of generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via an Internet access provider, including a service or system that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(2) ‘Internet access provider’ means a business, organization, or other entity providing directly to consumers a computer and communications facility through which a person may obtain access to the Internet. An Internet access provider does not include a business, organization, or other entity that provides only telecommunications services, cable services, or video services, or any system operated or services offered by a library or educational institution.

(3) ‘Internet identifier’ means an electronic mail address, user name, screen name, or similar identifier used for the purpose of Internet forum discussions, Internet chat room discussions, instant messaging, social networking, or similar Internet communication.

(B)(1) A sex offender who is required to register with the sex offender registry pursuant to this article must provide, upon registration and each re‑registration, information regarding the offender’s Internet accounts with Internet access providers and the offender’s Internet identifiers.

(2) A sex offender who is required to register with the sex offender registry pursuant to this article and who changes an Internet account with an Internet access provider or changes an Internet identifier must send written notice of the change to the appropriate sheriff within three business days of changing the Internet account or Internet identifier. A sheriff who receives notification of change of an Internet account or Internet identifier must notify the South Carolina Law Enforcement Division (SLED) within three business days.

(3) A sex offender who fails to provide Internet account or Internet identifier information, or who fails to provide notification of change of an Internet account or an Internet identifier, must be punished as provided for in Section 23‑3‑470. An offender who knowingly and willfully gives false information regarding an Internet account or Internet identifier must be punished as provided for in Section 23‑3‑475.

(C)(1) An interactive computer service may request from SLED, on a form prescribed by SLED, a list of all registered sex offenders or information regarding specific registered sex offenders. In order to receive such information, the interactive computer service must provide identifying information as prescribed by SLED, including, but not limited to, the name, address, telephone number, legal nature, and corporate form of the interactive computer service.

(2) SLED must release information requested by an interactive computer service, including, but not limited to, the full names of the registered sex offenders, any aliases, any other identifying characteristics, each offender’s date of birth, the home address on file, the offense for which the offender was required to register pursuant to Section 23‑3‑430, the date, city, and state of conviction, and any Internet identifiers. A photocopy of a current photograph must also be provided.

(3) SLED may charge a reasonable fee to cover the cost of copying and distributing information as provided for in this section. These funds must be used for the sole purpose of offsetting the cost of providing such information.

(4) SLED is not liable and must not be named as a party in an action to recover damages or seek relief for errors or omissions related to the distribution of information pursuant to this section; however, if the error or omission was done intentionally, with malice, or in bad faith, SLED is not immune from liability.

(5) The interactive computer service may use the information obtained from SLED to prescreen persons wanting to register for its service, identify sex offenders wanting to register for its service or using its service, prevent sex offenders from registering for its service, block sex offenders from using its service, disable sex offenders from using its service, remove sex offenders from its service, or to advise law enforcement or other governmental entities of potential violations of law or threats to public safety. An interactive computer service must not publish or in any way disclose or re‑disclose any information provided to the interactive computer service by SLED. A person who commits a criminal offense using information disclosed to the person pursuant to this section must be punished as provided for in Section 23‑3‑520.

(6) An interactive computer service is not liable and must not be named as a party in an action to recover damages or seek relief for:

(a) making or not making a request for information as permitted by this section;

(b) prescreening or not prescreening a person wanting to register for its service;

(c) identifying, blocking, or otherwise preventing a person from registering for its service based on a good faith belief that such person’s Internet account information or Internet identifier appears in the information obtained from SLED, the National Sex Offender Registry, or any analogous state registry;

(d) not identifying, blocking, or otherwise preventing a person from registering for its service whose Internet account information or Internet identifier appears in the information obtained from SLED, the National Sex Offender Registry, or any analogous state registry;

(e) identifying, blocking, disabling, removing, or otherwise affecting a user based on a good faith belief that such user’s Internet account information or Internet identifier appears in the information obtained from SLED, the National Sex Offender Registry, or any analogous state registry;

(f) not identifying, blocking, disabling, removing, or otherwise affecting a user, whose Internet account information or Internet identifier appears in the information obtained from SLED, the National Sex Offender Registry, or any analogous state registry; or

(g) using or not using the information obtained from SLED to advise law enforcement or other governmental entities of potential violations of law or threats to public safety.

(D) If a person commits a sexual offense in which the victim is under the age of eighteen at the time of the offense or the person reasonably believes is under the age of eighteen at the time of the offense, and the offender is required to register with the sex offender registry for the offense, then, upon conviction, adjudication of delinquency, guilty plea, or plea of nolo contendere, the judge must order as a condition of probation or parole that the person is prohibited from using the Internet to access social networking websites, communicate with other persons or groups for the purpose of promoting sexual relations with persons under the age of eighteen, and communicate with a person under the age of eighteen when the person is over the age of eighteen. The judge may permit a person to use the Internet to communicate with a person under the age of eighteen when such a person is the parent or guardian of a child under the age of eighteen, or the grandparent of a grandchild under the age of eighteen, and the person is not otherwise prohibited from communicating with the child or grandchild.”

SECTION 3. Section 23-3-430(C) of the 1976 Code is amended to read:

“(C) For purposes of this article, a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses shall be referred to as an offender:

(1) criminal sexual conduct in the first degree (Section 16‑3‑652);

(2) criminal sexual conduct in the second degree (Section 16‑3‑653);

(3) criminal sexual conduct in the third degree (Section 16‑3‑654);

(4) criminal sexual conduct with minors, first degree (Section 16‑3‑655(1));

(5) criminal sexual conduct with minors, second degree. If evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct, as contained in Section 16‑3‑655(3) provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, the convicted person is not an offender and is not required to register pursuant to the provisions of this article;

(6) engaging a child for sexual performance (Section 16‑3‑810);

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

(8) criminal sexual conduct: assaults with intent to commit (Section 16‑3‑656);

(9) incest (Section 16‑15‑20);

(10) buggery (Section 16‑15‑120);

(11) committing or attempting lewd act upon child under sixteen (Section 16‑15‑140);

(12) peeping, voyeurism, or aggravated voyeurism (Section 16‑17‑470);

(13) violations of Article 3, Chapter 15 of Title 16 involving a minor;

(14) a person, regardless of age, who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in this State, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in a comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of indecent exposure or of a similar offense in other jurisdictions is required to register pursuant to the provisions of this article if the court makes a specific finding on the record that based on the circumstances of the case the convicted person should register as a sex offender;

(15) kidnapping (Section 16‑3‑910) of a person eighteen years of age or older except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense;

(16) kidnapping (Section 16‑3‑910) of a person under eighteen years of age except when the offense is committed by a parent;

(17) criminal sexual conduct when the victim is a spouse (Section 16‑3‑658);

(18) sexual battery of a spouse (Section 16‑3‑615);

(19) sexual intercourse with a patient or trainee (Section 44‑23‑1150);

(20) criminal solicitation of a minor if the purpose or intent of the solicitation or attempted solicitation was to:

(a) persuade, induce, entice, or coerce the person solicited to engage or participate in sexual activity as defined in Section 16‑15‑375(5);

(b) perform a sexual activity in the presence of the person solicited (Section 16‑15‑342); ~~or~~

(21) administering, distributing, dispensing, delivering, or aiding, abetting, attempting, or conspiring to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate to an individual with the intent to commit a crime listed in Section 44‑53‑370(f), except petit larceny or grand larceny; or

(22) any other offense specified by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA).”

SECTION 4. Section 23-3-450 of the 1976 Code is amended to read:

“Section 23-3-450. The offender shall register with the sheriff of each county in which he resides, owns real property, is employed, or attends, is enrolled at, volunteers at, interns at, or carries on a vocation at any public or private school, including, but not limited to, a secondary school, adult education school, college or university, and any vocational, technical, or occupational school. To register, the offender must provide information as prescribed by SLED. The sheriff in the county in which the offender resides, owns real property, is employed, or attends, is enrolled at, volunteers at, interns at, or carries on a vocation at any public or private school shall forward all required registration information to SLED within ~~five~~ three business days. A copy of this information must be kept by the sheriff’s department. The county sheriff shall ensure that all information required by SLED is secured and shall establish specific times of the day during which an offender may register. An offender shall not be considered to have registered until all information prescribed by SLED has been provided to the sheriff. The sheriff in the county in which the offender resides, owns real property, is employed, or attends, is enrolled at, volunteers at, interns at, or carries on a vocation at any public or private school shall notify all local law enforcement agencies, including college or university law enforcement agencies, within ~~five~~ three business days of an offender who resides, owns real property, is employed, or attends, is enrolled at, volunteers at, interns at, or carries on a vocation at any public or private school within the local law enforcement agency’s jurisdiction.”

SECTION 5. Section 23-3-460 of the 1976 Code is amended to read:

“Section 23-3-460.(A) A person required to register pursuant to this article is required to register bi‑annually for life. For purposes of this article, “bi‑annually” means each year during the month of his birthday and again during the sixth month following his birth month. The person required to register shall register and must re‑register at the sheriff’s department in each county where he resides, owns real property, is employed, or attends any public or private school, including, but not limited to, a secondary school, adult education school, college or university, and any vocational, technical, or occupational school. A person determined by a court to be a sexually violent predator pursuant to state law is required to verify registration and be photographed every ninety days by the sheriff’s department in the county in which he resides unless the person is committed to the custody of the State, and verification will be held in abeyance until his release.

(B) A person classified as a Tier III offender by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA), is required to register every ninety days.

~~(B)~~(C) If a person required to register pursuant to this article changes his address within the same county, that person must send written notice of the change of address to the sheriff within ~~ten~~ three business days of establishing the new residence. If a person required to register under this article owns or acquires real property or is employed within a county in this State, or attends, is enrolled at, volunteers at, interns at, or carries on a vocation at any public or private school, including, but not limited to, a secondary school, adult education school, college or university, and any vocational, technical, or occupational school, he must register with the sheriff in each county where the real property, employment, or the public or private school is located within ~~ten~~ three business days of acquiring the real property or attending the public or private school.

~~(C)~~(D) If a person required to register pursuant to this article changes his permanent or temporary address into another county in South Carolina, the person must register with the county sheriff in the new county within ~~ten~~ three business days of establishing the new residence. The person must also provide written notice within ~~ten~~ three business days of the change of address in the previous county to the sheriff with whom the person last registered.

~~(D)~~(E) A person required to register pursuant to this article and who is employed by, attends, is enrolled at, volunteers at, interns at, or carries on a vocation at any public or private school, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university, and any vocational, technical, or occupational school, must provide written notice within ~~ten~~ three business days of each change in attendance, enrollment, volunteer status, intern status, employment, or vocation status at any public or private school in this State. For purposes of this subsection, ‘employed and carries on a vocation’ means employment that is full‑time or part‑time for a period of time exceeding fourteen days or for an aggregate period of time exceeding thirty days during a calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit; and ‘student’ means a person who is enrolled on a full‑time or part‑time basis, in a public or private school, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university, and a vocational, technical, or occupational school.

~~(E)~~(F) If a person required to register pursuant to this article moves outside of South Carolina, the person must provide written notice within ~~ten~~ three business days of the change of address to a new state to the county sheriff with whom the person last registered.

~~(F)~~(G) A person required to register pursuant to this article who moves to South Carolina from another state~~,~~ establishes residence, acquires real property, is employed in, or attends or is enrolled at, volunteers or interns at, or is employed by or carries on a vocation at a public or private school, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university, and a vocational, technical, or occupational school in South Carolina, and is not under the jurisdiction of the Department of Corrections, the Department of Probation, Parole and Pardon Services, the Department of Juvenile Justice, or the Juvenile Parole Board at the time of moving to South Carolina must register within ~~ten~~ three business days of establishing residence, acquiring real property, gaining employment, or attending or enrolling at, volunteering or interning at, or being employed by or carrying on a vocation at a public or private school in this State.

~~(G)~~(H) The sheriff of the county in which the person resides must forward all changes to any information provided by a person required to register pursuant to this article to SLED within ~~five~~ three business days.

~~(H)~~(I) A sheriff who receives registration information, notification of change of permanent or temporary address, or notification of change in employment, or attendance, enrollment, employment, volunteer status, intern status, or vocation status at a public or private school, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university, and a vocational, technical, or occupational school, must notify all local law enforcement agencies, including college or university law enforcement agencies, within ~~five~~ three business days of an offender whose permanent or temporary address, real property, or public or private school is within the local law enforcement agency’s jurisdiction.

~~(I)~~(J) The South Carolina Department of Motor Vehicles, shall inform, in writing, any new resident who applies for a driver’s license, chauffeur’s license, vehicle tag, or state identification card of the obligation of sex offenders to register. The department also shall inform, in writing, a person renewing a driver’s license, chauffeur’s license, vehicle tag, or state identification card of the requirement for sex offenders to register.”

SECTION 6. Section 23-3-470 of the 1976 Code is amended to read:

“Section 23-3-470.(A) It is the duty of the offender to contact the sheriff in order to register, provide notification of change of permanent or temporary address, or notification of change of employment, or in attendance, enrollment, employment, volunteer status, intern status, or vocation status at any public or private school, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university, and any vocational, technical, or occupational school. If an offender fails to register, provide notification of change of address, or notification of permanent or temporary change in employment, or attendance, enrollment, employment, volunteer status, intern status, or vocation status at any public or private school, as required by this article, he must be punished as provided in subsection (B).

(B)(1) A person convicted for a first offense is guilty of a misdemeanor and may be fined not more than ~~five hundred~~ one thousand dollars, or imprisoned for not more than ~~thirty~~ three hundred sixty-six days, or both. Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, or any other provision of law, a first offense may be tried in magistrates court.

(2) A person convicted for a second offense is guilty of a misdemeanor and must be imprisoned for a mandatory period of ~~one year~~ three hundred sixty-six days, no part of which shall be suspended nor probation granted.

(3) A person convicted for a third or subsequent offense is guilty of a felony and must be imprisoned for a mandatory period of five years, three years of which shall not be suspended nor probation granted.”

SECTION 7. Section 23-3-475 of the 1976 Code is amended to read:

“Section 23-3-475.(A) Anyone who knowingly and wilfully gives false information when registering as an offender pursuant to this article must be punished as provided in subsection (B).

(B)(1) A person convicted for a first offense is guilty of a misdemeanor and ~~must~~ may be fined not more than one thousand dollars, or imprisoned for not more than three hundred sixty-six days, or both ~~a mandatory period of ninety days, no part of which shall be suspended nor probation granted~~. Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, or any other provision of law, a first offense may be tried in magistrates court.

(2) A person convicted for a second offense is guilty of a misdemeanor and must be imprisoned for a mandatory period of ~~one year~~ three hundred sixty-six days, no part of which shall be suspended nor probation granted.

(3) A person convicted for a third or subsequent offense is guilty of a felony and must be imprisoned for a mandatory period of five years, three years of which shall not be suspended nor probation granted.”

SECTION 8. Section 23-3-530 of the 1976 Code is amended to read:

“Section 23-3-530. The State Law Enforcement Division shall develop and maintain a protocol manual to be used by contributing agencies in the administration of the sex offender registry. The protocol manual must include, but is not limited to, the following:

(1) procedures for the verification of addresses by the sheriff’s department in the county where the person resides; and

(2) specific requirements for registration and re‑registration including, but not limited to, the following:

(a) the name, social security number, age, race, sex, date of birth, height, weight, hair and eye color~~,~~; address of permanent residence, address of current temporary residence, within the State or out of state, including rural route address and post office box, which may not be provided instead of a physical residential address~~,~~; date and place of employment~~,~~; vehicle make, model, color, and license tag number, including work vehicles, and the permanent or frequent location where all vehicles are kept;~~,~~ fingerprints and palm prints;~~,~~ Internet identifiers; passport and immigration documents; and a photograph;

(b) the name, address, and county of each institution of higher learning, including the specific campus location, if the person is enrolled, employed, volunteers at, interns at, or carries on a vocation there;

(c) the vehicle identification number, license tag number, registration number, and a description, including the color scheme, if the person lives in a motor vehicle, trailer, mobile home, or manufactured home and the permanent or frequent location where all vehicles, trailers, mobile homes and manufactured homes are kept; ~~and~~

(d) the hull identification number, the manufacturer’s serial number, the name of the vessel, live‑aboard vessel, or houseboat, the registration number, and a description of the color scheme, if the person lives in a vessel, live‑aboard vessel, or houseboat; and

(e) the tail number, manufacturer’s serial number, and model of any aircraft, and a description of the aircraft, including the color scheme, and the permanent or frequent location where all aircraft are kept, if the person owns or operates an aircraft.”

SECTION 9. This act takes effect upon approval by the Governor.

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