COMMITTEE REPORT

March 7, 2012

**H. 3130**

Introduced by Reps. Brady, Stringer, Long, Butler Garrick and Erickson

S. Printed 3/7/12--H.

Read the first time January 11, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3130) to amend the Code of Laws of South Carolina, 1976, by adding Section 63‑19‑2470 so as to create the offense of sexting, to provide for a civil fine, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Article 23, Chapter 19, Title 63 of the 1976 Code is amended by adding:

“Section 63‑19‑2470. (A) It is unlawful for a child who is less than seventeen years of age to use a telecommunications device to knowingly transmit or distribute to another person a photograph or text message with a photograph attachment depicting a person who is less than eighteen years of age in a state of sexual activity or a state of sexually explicit nudity as defined by Section 16‑15‑375(5) or (6).

(B) A child less than seventeen years of age does not knowingly transmit or distribute the material by reporting the matter to a law enforcement agency, teacher, principal, or parent or by affording a law enforcement agency, teacher, principal, or parent access to the image.

(C) A child adjudicated delinquent for this offense may only be sentenced to a fine and this fine may not exceed one hundred dollars. The fine is subject to applicable court costs.

(D) A child who violates the provisions of this statute shall not be taken into custody, arrested, placed in jail or in any other secure facility, committed to the custody of the Department of Juvenile Justice, or found to be in contempt of court for a violation of this section or for failure to pay a fine.

(E) A child less than seventeen years of age who violates the provisions of this statute shall not be prosecuted under Sections 16‑15‑305, 16‑15‑325, 16‑15‑345, 16‑15‑405, or 16‑15‑410 unless, upon motion by the solicitor, the family court determines in its discretion to be in the interest of justice for the child to be prosecuted under Sections 16‑15‑305, 16‑15‑325, 16‑15‑345, 16‑15‑405, or 16‑15‑410.

(F) A child less than seventeen years of age who receives or possesses a photograph transmitted by a telecommunications device or text message with a photograph attachment depicting a person who is less than eighteen years of age in a state of sexual activity or a state of sexually explicit nudity as defined by Section 16‑15‑375(5) or (6) shall not be prosecuted under Sections 16‑15‑305, 16‑15‑325, 16‑15‑345, 16‑15‑405, or 16‑15‑410 unless, upon motion by the solicitor, the family court determines in its discretion to be in the interest of justice for the child to be prosecuted under Sections 16‑15‑305, 16‑15‑325, 16‑15‑345, 16‑15‑405, or 16‑15‑410.”/

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

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**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, TO PROVIDE FOR A CIVIL FINE AND THE CREATION OF AN EDUCATIONAL PROGRAM FOR A PERSON WHO COMMITS THE OFFENSE, TO PROVIDE FOR THE RESTRICTION OF A MINOR’S DRIVING PRIVILEGES UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE CERTAIN SAFEGUARDS FOR MINORS WHO COMMIT THE OFFENSE, AND TO PROVIDE FOR THE USE OF THE UNIFORM TRAFFIC TICKET FOR THE OFFENSE AND FOR JURISDICTION OVER THE OFFENSE IN THE MUNICIPAL OR MAGISTRATES COURT.

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 is amended by adding:

“Section 63‑19‑2470. (A) Notwithstanding another provision of law, it is unlawful for a minor who is at least twelve years of age but less than the age of eighteen years to use a telecommunications device to knowingly transmit or distribute to another person a photograph, text message with a photo attachment, or other transmitted material of any kind depicting himself or another person who is less than eighteen years of age in a state of sexual activity or a state of sexually explicit nudity. A minor who violates the provisions of this section is guilty of the civil offense of sexting and is subject to a civil fine of not more than one hundred dollars and may be ordered to complete an educational program as provided in subsection (C). The civil fine is subject to all applicable court costs, assessments, and surcharges.

(B) If a minor convicted pursuant to this section fails to pay the civil fine or to successfully complete the education program as provided in subsection (C) as ordered by the court, the court may restrict the minor’s driving privileges to driving only to and from school, work, and church, or as the court considers appropriate for a period of ninety days beginning from the date provided by the court. If the minor does not have a driver’s license or permit, the court may delay the issuance of the person’s driver’s license or permit for a period of ninety days beginning on the date the person applies for a driver’s license or permit. Upon restricting or delaying the issuance of the minor’s driver’s license or permit, the court must complete and remit to the Department of Motor Vehicles any required forms or documentation. The minor is not required to submit his driver’s license or permit to the court or to the Department of Motor Vehicles. The Department of Motor Vehicles must clearly indicate in the minor’s driving record that the restriction or delayed issuance of the minor’s driver’s license or permit is not a traffic violation of a driver’s license suspension. The Department of Motor Vehicles must notify the minor’s parent, guardian, or custodian of the restriction or delayed issuance of the minor’s driver’s license or permit. At the completion of the ninety‑day period, the Department of Motor Vehicles must remove the restriction or allow for the issuance of the minor’s license or permit. No record may be maintained by the Department of Motor Vehicles of the restriction or delayed issuance of the minor’s driver’s license or permit after the ninety‑day period. The restriction or delayed issuance of the minor’s driver’s license or permit must not be considered by an insurance company for automobile insurance purposes or result in an automobile insurance penalty, including a penalty under the Merit Rating Plan promulgated by the Department of Insurance.

(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 minors who violate the provisions of this section. 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 violation of the provisions of this section is not a criminal or delinquent offense and no criminal or delinquent record may be maintained. A minor may not be detained, taken into custody, arrested, placed in jail or in any other secure facility, committed to the custody of the Department of Juvenile Justice, or found to be in contempt of court for a violation of this section or for failure to pay a fine or successfully complete the educational program provided in subsection (C).

(G) A violation of this section is not grounds for denying, suspending, or revoking a person’s participation in a state college or university financial assistance program including, but not limited to, a Life Scholarship, a Palmetto Fellows Scholarship, or a need‑based grant.

(H) The uniform traffic ticket, established pursuant to Section 56‑7‑10, may be used by law enforcement officers for a violation of this section. The law enforcement officer must notify the minor’s parent, guardian, or custodian of the minor’s offense, if reasonable, within ten days of the issuance of the uniform traffic ticket.

(I) Jurisdiction to hear a violation of this section is vested exclusively in the municipal court and the magistrates court. A hearing concerning a violation of this section must be placed on the court’s appropriate docket for traffic violations and not on the court’s docket for civil matters.”

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

‑‑‑‑XX‑‑‑‑