COMMITTEE REPORT

May 30, 2012

**H. 3130**

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

S. Printed 5/30/12--S.

Read the first time March 27, 2012.

**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 3, Chapter 15, Title 16 of the 1976 Code is amended by adding:

“Section 16‑15‑386. (A) A person who is less than eighteen years of age shall not 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, as defined by Section 16-15-375(5), or a state of sexually explicit nudity, as defined by Section 16‑15‑375(6).

(B) A person less than eighteen years of age does not knowingly transmit or distribute the material in violation of this section 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 person who violates this section:

(1) for a first offense, commits a noncriminal offense and is subject to a civil fine of one hundred and fifty dollars. The civil fine is subject to all applicable court costs, assessments, and surcharges;

(2) for a second offense, commits a noncriminal offense and is subject to a civil fine of five hundred dollars. The civil fine is subject to all applicable court costs, assessments, and surcharges; and

(3) for a third or subsequent offense, is guilty of a misdemeanor, and, upon conviction, being adjudicated delinquent, or entry of a plea of guilty or nolo contendere must be fined one thousand dollars.

(D) A person may not be detained, taken into custody, arrested, placed in jail or in any other secure facility, or committed to the custody of the Department of Juvenile Justice for a first or second offense violation of this section. However, if a person fails to pay a civil fine for a first or second offense violation of this section, the court may hold the person in contempt of court and order the person to perform community service.

(E) A person who commits a first or second offense violation of this section must not be prosecuted under Sections 16‑15‑305, 16‑15‑325, 16‑15‑345, or 16‑15‑410, unless, upon motion of the solicitor, the court, in its discretion, determines that such prosecution is in the interest of justice.

(F) A person who has been convicted of a violation of this section must not be required to register with the sex offender registry pursuant to Article 7, Chapter 3, Title 23.

(G) Jurisdiction to hear a violation of this section is vested exclusively in the municipal court and the magistrate’s court.”

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

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

Minimal (Some additional costs expected but can be absorbed)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Judicial Department and the Prosecution Coordination Commission indicate that this bill will have a minimal impact on the General Fund of the State, which both agencies can absorb at their current level of funding.

The Department of Public Safety and the Department of Juvenile Justice indicate that this bill will have no fiscal impact on the General Fund of the State, or on federal and/or other funds.

*Approved By:*

Brenda Hart

Office of State Budget

**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) 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.

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