**A** **BILL**

TO AMEND SECTION 16‑3‑651, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR PURPOSES OF CRIMINAL SEXUAL CONDUCT OFFENSES, SO AS TO PROVIDE A DEFINITION FOR THE TERM “CONSENT”; AND TO AMEND SECTION 16‑3‑652, RELATING TO CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, SO AS TO PROVIDE FRAUD BY THE ACTOR IN THE PURVIEW OF THE STATUTE.

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

SECTION 1. Section 16‑3‑651 of the 1976 Code is amended to read:

“Section 16‑3‑651. For the purposes of Sections 16‑3‑651 to 16‑3‑659.1:

(a) ‘Actor’ means a person accused of criminal sexual conduct.

(b) ‘Aggravated coercion’ means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person.

(c) ‘Aggravated force’ means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon.

(d) ‘Consent’ means words or overt actions indicating a freely given agreement to have sexual intercourse or sexual contact and is further defined, but not limited to, the following:

(i) an expression of lack of consent through words or conduct means there is no consent or that consent has been withdrawn;

(ii) a current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent; and

(iii) lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent.

~~(d)~~(e) ‘Intimate parts’ includes the primary genital area, anus, groin, inner thighs, or buttocks of a male or female human being and the breasts of a female human being.

~~(e)~~(f) ‘Mentally defective’ means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct.

~~(f)~~(g) ‘Mentally incapacitated’ means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause.

~~(g)~~(h) ‘Physically helpless’ means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

~~(h)~~(i) ‘Sexual battery’ means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

~~(i)~~(j) ‘Victim’ means the person alleging to have been subjected to criminal sexual conduct.”

SECTION 2. Section 16‑3‑652 of the 1976 Code is amended to read:

“Section 16‑3‑652. (1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses aggravated force to accomplish sexual battery.

(b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act.

(c) The actor causes the victim, without the victim’s consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance.

(d) The victim was unconscious of the nature of the act because the victim was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the actor’s fraud in fact.

(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment for not more than thirty years, according to the discretion of the court.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

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

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