**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑3‑1850 SO AS TO DEFINE NECESSARY TERMS, CREATE THE OFFENSE OF CYBERBULLYING, AND PROVIDE PENALTIES FOR VIOLATIONS.

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

SECTION 1. Article 17, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑1850. (A) As used in this section, the term:

(1) ‘Computer’ means a device that performs logical, arithmetic, and memory functions by manipulating impulses including, but not limited to, all input, output, processing, storage, computer software, and communication facilities that are connected or related to a computer in a computer system or computer network. For the purposes of this section, ‘computer’ includes, but is not limited to, mainframes, servers, workstations, desktops, and notebooks; industrial controls such as programmable logic controllers and supervisory control and data acquisition systems; portable hand‑held computing devices such as personal digital assistants and digital cellular telephones; data communications network devices such as routers and switches; and all other devices that are computer‑based or communicate with or are under the control of a computer such as appropriate telephone switches, medical devices, and cable and satellite television interface systems. ‘Computer’ does not include automated typewriters or typesetters.

(2) ‘Computer data’ means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, is being processed, or is intended to be processed in a computer, computer system, or computer network. Data may be in any form including, but not limited to, computer printouts, magnetic storage media, optical storage media, network data packets, flash memory cards, smart card memory, punched cards, or as stored in the memory of the computer or in transit or displayed on a video device.

(3) ‘Computer network’ means the interconnection of two or more computers, and those devices and facilities through which an interconnection occurs.

(4) ‘Computer program’ means a series of instructions or statements executable on a computer, which direct the computer system in a manner to process data or perform other specified functions.

(5) ‘Computer software’ means a set of computer programs, data, procedures, or associated documentation concerned with the operation of a computer system.

(6) ‘Computer system’ means a set of related, whether connected or unconnected, computer equipment, devices, or software.

(7) ‘Minor’ means a person who is under eighteen years of age.

(B) Except as otherwise provided in this article, it is unlawful for a person to knowingly use a computer or computer network to do any of the following:

(1) With the intent to intimidate or torment a minor:

(a) build a fake profile or website;

(b) pose as a minor in an:

(i) Internet chat room;

(ii) electronic mail message or email; or

(iii) instant message;

(c) follow a minor online or into an Internet chat room; or

(d) post or encourage others to post on the Internet private, personal, sexual information, or false information pertaining to a minor.

(2) With the intent to intimidate or torment a minor or the minor’s parent or guardian:

(a) post a real or doctored image of a minor on the Internet;

(b) access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password‑protected account or stealing or otherwise accessing passwords; or

(c) use a computer system for repeated, continuing, or sustained electronic communications, including email or other transmissions, to a minor.

(3) Make a statement, whether true or false, intending to immediately provoke, and that is likely to provoke, a third party to stalk or harass a minor.

(4) Copy and disseminate, or cause to be made, an unauthorized copy of data pertaining to a minor for the purpose of intimidating or tormenting that minor. This data includes, but is not limited to, printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network.

(5) Sign up a minor for a pornographic Internet site with the intent to intimidate or torment the minor.

(6) Without authorization of the minor or the minor’s parent or guardian, sign up a minor for email lists or to receive junk emails or instant messages, with the intent to intimidate or torment the minor.

(C) A person who violates the provisions of this section commits the offense of cyberbullying, and at the time of the offense if the person is:

(1) eighteen years of age or older, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than six months; or

(2) under the age of eighteen, is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days.

(D) If a person pleads guilty to or is found guilty of an offense pursuant to subsection (C)(2), the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation. Upon fulfillment of the terms and conditions of the probation, the court shall discharge the defendant and dismiss the proceedings against the defendant. Discharge and dismissal pursuant to this subsection is without court adjudication of guilt and may not be considered a conviction for purposes of this section or another provision of law. Upon discharge and dismissal pursuant to this subsection, the person may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge pursuant to the provisions of Section 17‑1‑40.

(E) The provisions of this section do not apply to a law enforcement agent or officer acting in an official capacity.”

SECTION 2. 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 3. This act takes effect upon approval by the Governor.

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