**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑15‑386 SO AS TO CREATE THE OFFENSE OF SEXTING FOR A PERSON LESS THAN EIGHTEEN YEARS OF AGE; TO PROVIDE FOR CIVIL FINES AND COSTS FOR COMMITTING A FIRST OR SECOND OFFENSE; TO PROVIDE FOR A MISDEMEANOR AND A CRIMINAL FINE AND COSTS FOR COMMITTING THREE OR MORE OFFENSES; TO PROHIBIT THE ARREST OR PLACEMENT IN THE CUSTODY OF THE DEPARTMENT OF JUVENILE JUSTICE OR OTHER CONFINEMENT FOR COMMITTING A FIRST OR SECOND OFFENSE, WITH CERTAIN EXCEPTIONS; TO PROHIBIT PROSECUTION OF A PERSON WHO HAS COMMITTED A FIRST OR SECOND SEXTING OFFENSE UNDER THIS SECTION OF COMMITTING CERTAIN OTHER CRIMES; TO PROHIBIT PLACEMENT ON THE SEX OFFENDER REGISTRY FOR COMMITTING AN OFFENSE UNDER THIS SECTION; TO PROVIDE FOR CONTEMPT OF COURT AND REQUIRED COMMUNITY SERVICE FOR FAILURE TO PAY FINES FOR FIRST AND SECOND OFFENSES; AND TO VEST EXCLUSIVE JURISDICTION TO HEAR ALLEGED OFFENSES IN THE MUNICIPAL AND MAGISTRATES COURT.

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

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 must not use a telecommunications device to knowingly transmit or distribute to another person a photograph or text message with an attached photograph 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 magistrates court.”

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

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